

Commerce Committee

Wednesday, January 19, 2022
9:30 AM - 11:00 AM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Wednesday, January 19, 2022
9:30 AM – 11:00 AM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

CS/HB 123 Consumer Finance Loans by Insurance & Banking Subcommittee, Stevenson

CS/HB 223 Mobile Home Registration Periods by Tourism, Infrastructure & Energy Subcommittee, Maney

HB 267 Swimming Pool Specialty Contracting Services by McClure

HB 269 Natural Gas and Public Utility Petitions for Rate Relief by Byrd

CS/HB 273 Money Services Businesses by Insurance & Banking Subcommittee, Aloupis

HB 381 Breach of Bond Costs by Maney

HB 789 Lifeline Services by Payne

HB 6031 Individual Wine Containers by LaMarca

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 123 Consumer Finance Loans
SPONSOR(S): Insurance & Banking Subcommittee, Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The Florida Consumer Finance Act, ch. 516, F.S., permits licensed lenders to make secured or unsecured loans up to $25,000 with a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.

Consumer finance lenders must maintain liquid assets of at least $25,000 per location. The bill authorizes consumer finance lenders to provide a surety bond, certificate of deposit, or letter of credit of a specified amount in lieu of maintaining liquid assets.

Consumer finance lenders are permitted to charge a borrower certain fees, including up to $25 for investigating the credit and character of the borrower. The exclusion of "prepayment penalties" from the list of permissible fees implies that consumer finance lenders are prohibited from charging prepayment penalties. The bill provides an express prohibition on prepayment penalties for consumer finance loans.

The bill has no fiscal impact on state or local governments and an indeterminate but likely positive impact on the private sector.

The bill provides an effective date of October 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Consumer Finance Loans

The Office of Financial Regulation's (OFR's) Division of Consumer Finance is responsible for the licensing and regulation of non-depository financial service entities and individuals, and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law.

One of the loan products regulated by the OFR's Division of Consumer Finance is the Florida Consumer Finance Act, ch. 516, F.S. ("the Act"). Loans permitted under the Act are commonly referred to as "consumer finance loans", which are "loan[s] of money, credit, goods, or choses in action,[1] including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."[2] Although consumer finance loans may be secured or unsecured, the Act prohibits lenders from taking a security interest in certain types of collateral.[3]

Consumer finance loans made pursuant to the Act must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments.[4] Installments may be due every two weeks, semimonthly, or monthly.[5] There is no minimum or maximum loan term under the Act. Consumer finance loans have a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.[6]

The original principal amount is the amount financed, as defined by the federal Truth in Lending Act (TILA)[7] and TILA's federal implementing regulations.[8] For the purpose of determining compliance with these statutory maximum interest rates, the interest rate computations used must be simple interest.[9] In the event that two or more interest rates are applied to the principal amount of a loan,[10] a lender may charge interest at a single annual percentage rate (APR) which would produce at maturity the total amount of interest as permitted by the tiered interest rate structure above.[11] The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its

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[1] "Chose in action" is defined as "1. A property right in personam, such as a debt owed by another person . . . 2. The right to bring an action to recover a debt, money, or thing. 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit." BLACK'S LAW DICTIONARY 101 (3d ed. 1996).

[2] S. 516.01(2), F.S.

[3] *See* s. 516.031(1), F.S. (prohibition on taking a security interest in land for a loan less than $1,000); s. 516.17, F.S. (prohibition on assignment of, or order for payment of, wages given to secure a loan).

[4] S. 516.36, F.S. This section does not apply to lines of credit.

[5] *Id.*

[6] S. 516.031(1), F.S.

[7] Codified at 15 U.S.C. § 1601 *et seq.*

[8] Currently, the statute references TILA's implementing regulations as "Regulation Z of the Board of Governors of the Federal Reserve System." s. 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the "Dodd-Frank Act", transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. *See also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).

[9] *Id.*

[10] For example, on a principle amount of $3,500, an interest rate of 30 percent per annum may be applied to $3,000 of the principle amount, and an interest rate of 24 percent per annum may be applied to the remaining $500 of the principal amount.

[11] S. 516.031(1), F.S.

implementing regulations.[12] A licensee may not induce or permit a borrower to divide a loan and may not induce or permit a person to become obligated to the licensee under more than one loan contract for the purpose of obtaining a greater finance charge than would otherwise be permitted under the parameters described above.[13]

If consideration for a new loan contract includes the unpaid principal balance of a prior loan with the licensee, then the principal amount of the new loan contract may not include more than 60 days' unpaid interest accrued on the prior loan.[14]

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following allowable fees:

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- Depending on the frequency of payments, a delinquency charge of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to $20.[15]

The exclusion of "prepayment penalties" from the list of permissible fees implies that consumer finance lenders are prohibited from charging prepayment penalties.[16]

Optional credit property, credit life, and disability insurance may be provided at the borrower's expense via a deduction from the principal amount of the loan.[17]

Licenses granted under the Act are for a single place of business[18] and must be renewed every two years.[19] As of October 28, 2021, there are 188 licensed consumer finance loan companies operating across a total of 389 locations in Florida.[20]

The historical yearly licensing data for ch. 516, F.S., is contained in the charts below.

Chapter 516, F.S., Licenses by Year										
	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10
Applications Received	318	44	136	82	48	72	192	30	52	32
Applications Approved	228	136	125	76	43	64	95	29	18	19
Active Licenses	589	607	568	609	532	584	626	600	390	386

[12] S. 516.031(2), F.S.
[13] S. 516.031(4), F.S.
[14] S. 516.031(5), F.S.
[15] S. 516.031(3), F.S.
[16] *Id.*; Office of Financial Regulation, Agency Analysis of 2022 Senate Bill 546, pp. 2-3 (Nov. 19, 2021).
[17] S. 516.35(2), F.S.
[18] Ss. 516.01(1) and 516.05(3), F.S.
[19] Ss. 516.03(1) and 516.05(1) & (2), F.S.
[20] Office of Financial Regulation, *supra* note 16 at p. 2.

Renewals & Reactivations	496	1	542	0	523	1	569	0	388	0

Chapter 516, F.S., Licenses by Year (Cont'd)										
	10-11	**11-12**	**12-13**	**13-14**	**14-15**	**15-16**	**16-17**	**17-18**	**18-19**	**19-20**
Applications Received	175	41	82	116	66	102	55	96	109	100
Applications Approved	137	37	53	113	37	81	36	83	104	98
Active Licenses	347	303	293	349	331	349	338	373	348	390
Renewals & Reactivations	226	0	258	0	312	0	326	0	342	0

An application to become a consumer finance lender must be accompanied by a nonrefundable application fee of $625 and a nonrefundable investigation fee of $200.[21] Licenses must be renewed biennially, at which time the licensee must pay a nonrefundable biennial license fee of $625.[22] At the time of application, the applicant must provide evidence of liquid assets of at least $25,000, and a licensee must at all times maintain such liquid assets.[23] Each location of a consumer finance lender must be separately licensed.[24]

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[25]

Deferred Presentment Transactions (Payday Loans)

Although the bill relates only to consumer finance loans under ch. 516, F.S., questions often arise as to how consumer finance loans compare to other consumer loans authorized in statute, particularly payday loans. Deferred presentment transactions, commonly referred to as "payday loans", are a small-dollar loan product under the OFR's regulatory authority. These transactions are governed by ch. 560, part IV, F.S.

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's (borrower's) check and agreeing to hold the check for a number of days until depositing, presenting, or redeeming the payment instrument.[26] The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,[27] and money services business licensed under ch. 560, part II[28] or part III,[29] F.S.

There are two types of payday loan products permitted in Florida:

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[21] S. 516.03(1), F.S.
[22] *Id.*; s. 516.05(1), F.S.
[23] Ss. 516.03(1) and 516.07(1)(b), F.S.
[24] S. 516.05(3), F.S.
[25] S. 516.02(4), F.S.
[26] S. 560.402(2) & (3), F.S.
[27] Section 655.005, F.S., defines a "financial institution" to mean a state or federal savings or thrift association, bank, savings back, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 *et seq*. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 *et seq*.
[28] Licensure as a money transmitter. A money transmitter is defined by s. 560.103(23), F.S., as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under ch. 560, part III, F.S.
[29] Licensure as a check casher. A check casher is defined by s. 560.103(6), F.S., as a person who sells currency in exchange for payment instruments received, except travelers checks.

- *Deferred presentment transaction not repayable in installments*: The face amount of a check taken for deferred presentment may not exceed $500, exclusive of fees.[30] Fees may not exceed 10 percent of the payment provided to the drawer plus a verification fee of up to $5.[31] The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.[32]
- *Deferred presentment installment transaction*: A deferred presentment installment transaction is repayable in installments, has a term of 60 to 90 days, and may have an outstanding transaction balance (exclusive of fees) of up to $1,000.[33] The permissible fees are a verification fee of up to $5 and up to 8 percent of the outstanding transaction balance on a biweekly basis.[34] The installment periods must be 13 days to one calendar month, except that the first installment period may be longer than the remaining installment periods by not more than 15 days.[35] Prepayment penalties are prohibited.[36]

A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.[37] In order to enforce this restriction, the OFR maintains a database against which a deferred presentment provider must verify each transaction before entering into the deferred presentment agreement.[38] A deferred presentment provider may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.[39]

For deferred presentment transactions not repayable in installments, if the drawer, by the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days.[40] As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.[41]

If the drawer in a deferred presentment installment transaction informs the deferred presentment provider in writing or in person by noon of the business day before a scheduled payment that the drawer cannot pay in full the scheduled payment, the provider must give the drawer one opportunity to defer a scheduled payment for no additional fee or charge.[42] The deferred payment is due after the last scheduled installment payment, at an interval which is no shorter than the intervals between the originally scheduled payments.[43] Thus, for a deferred presentment installment transaction in which payments are due once every two weeks, the deferred payment would be due at least two weeks after the final installment payment is due.

A deferred presentment provider may not include in the agreement a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the agreement or any provision of ch. 560, part IV, F.S.[44] A deferred presentment provider must comply

[30] S. 560.404(5), F.S.
[31] S. 560.404(6), F.S.
[32] S. 560.404(8), F.S.
[33] S. 560.404(5) & (8), F.S.
[34] S. 560.404(6), F.S.
[35] S. 560.404(26), F.S.
[36] S. 560.404(6)(c), F.S.
[37] S. 560.404(19), F.S.
[38] S. 560.404(19)(a) & (23), F.S.
[39] S. 560.404(18), F.S.
[40] S. 560.404(22), F.S.
[41] *Id.*
[42] S. 560.404, F.S.
[43] *Id.*
[44] S. 560.404(10), F.S.

with state and federal disclosure requirements.[45]

Effect of the Bill

The bill amends various provisions related to consumer finance loans under ch. 516, F.S.

Surety Bond, Certificate of Deposit, or Letter of Credit in Lieu of Liquid Assets

The bill authorizes consumer finance lenders to provide the OFR a surety bond, certificate of deposit, or irrevocable letter of credit in lieu of maintaining liquid assets. The surety bond must be issued by a bonding company or insurance company authorized to do business in this state. The certificate of deposit must be deposited in a financial institution.[46] The letter of credit must be issued by a financial institution.[47]

The surety bond, certificate of deposit, or letter of credit must be in the amount of at least $25,000. However, a company with multiple licensed locations is authorized to provide a rider or surety bond, certificate of deposit, or letter of credit in the amount of at least $5,000 for each additional license after the first. The aggregate amount of the surety bond, certificate of deposit, or letter of credit required for a company with multiple licenses is capped at $100,000.

The surety bond, certificate of deposit, or letter of credit must name the OFR as beneficiary and must be for the use and benefit of any borrower who is injured by acts of a licensee involving fraud, misrepresentation, or deceit, including willful imposition of illegal or excessive charges; or misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower, where such acts are in connection with making a consumer finance loan. The OFR, or any claimant, may bring an action in a court of competent jurisdiction on the surety bond, certificate of deposit, or letter of credit. The surety bond, certificate of deposit, or letter of credit must be payable on a pro rata basis, but the aggregate amount may not exceed the amount of the surety bond, certificate of deposit, or letter of credit.

The surety bond, certificate of deposit, or letter of credit may not be canceled by the licensee, bonding or insurance company, or financial institution except upon notice to the OFR by certified mail. A cancellation may not take effect until 30 calendar days after receipt by the OFR of the written notice.

If the bonding or insurance company or financial institution pays a claim, it must give written notice by certified mail to the OFR within 10 calendar days after it pays the claim. The notice must contain details sufficient to identify the claimant and the claim or judgment paid. If the principal sum of the surety bond, certificate of deposit, or letter of credit is reduced by one or more recoveries or payments, the consumer finance lender must furnish to the OFR a new or additional surety bond, certificate of deposit, or letter of credit so that the total or aggregate principal sum equals the required amount. Alternatively, a licensee may furnish an endorsement executed by the bonding or insurance company or financial institution reinstating the required principal amount.

The required surety bond, certificate of deposit, or letter of credit must remain in place for two years after the consumer finance lender ceases licensed operations in this state. During the two-year period, the OFR may allow for a reduction or elimination of the surety bond, certificate of deposit, or letter of credit to the extent the consumer finance lender's outstanding consumer finance loans in this state are reduced.

Failure to maintain the existing liquid asset requirement or the proposed alternatives of the surety bond, certificate of deposit, or letter of credit in the required amount is grounds for denial of license application and grounds for disciplinary action against a consumer finance lender.

[45] S. 560.404(13) & (20), F.S.
[46] As defined in s. 655.005(1)(i), F.S.
[47] As defined in s. 655.005(1)(i), F.S.

The bill makes conforming changes under the Financial Technology Sandbox in s. 559.952, F.S.

Express Prohibition on Prepayment Penalties

The bill provides an express prohibition on prepayment penalties for consumer finance loans.

Effective Date

The bill provides an effective date of October 1, 2022.

Comparison Chart

Below is a chart comparing existing law regarding payday loans and consumer finance loans with the changes proposed by the bill.

	Payday Loans (Ch. 560, Part IV, F.S.)		**Consumer Finance Loans (Ch. 516, F.S.)**	
	Payday Loans (Non-Installment)	**Payday Loans (Installment)**	**Current Law**	**HB 123 Proposed Changes**
Loan Amount	$500 (max)	$1,000 (max)	$25,000 (max)	(No change)
Length of Term	7 - 31 days	60 - 90 days	No min. or max.	(No change)
Payments	• Lump sum at end of loan term	• Installments with 13 days to 1 month in between each, except that the first installment period may be longer than the remaining installment periods by a maximum of 15 days	• Installments due monthly, semi-monthly, or every 2 weeks	(No change)
Interest Rate	• APR equivalent (assuming $500 loan amount and $5 verification fee): 129.52% for a 31 day loan, 573.57% for a 7 day loan	• 8% biweekly on the outstanding transaction balance • APR equivalent: approx. 208% (will be slightly higher as a result of the $5 verification fee)	• 30% per year on the first $3,000 of principal • 24% per year on principal above $3,000 and up to $4,000 • 18% per year on principal above $4,000 and up to $25,000	(No change)
Other Upfront Fees Permitted	• 10% of loan amount • $5 verification fee • No additional fees permitted	• $5 verification fee • No additional fees permitted	• Fees specified in s. 516.031(3), F.S., including up to $25 for investigating the credit and character of the borrower • No additional fees permitted	• Adds express prohibition on prepayment penalties

B. SECTION DIRECTORY:

Section 1. Amends s. 516.03, F.S., relating to application for license; fees; etc.

Section 2. Amends s. 516.031, F.S., relating to finance charge; maximum rates.

Section 3. Amends s. 516.05, F.S., relating to license.

Section 4. Amends s. 516.07, F.S., relating to grounds for denial of license or for disciplinary action.

Section 5. Amends s. 559.952, F.S., relating to Financial Technology Sandbox.

Section 6. Provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. The bill will require minimal changes to the OFR's Regulatory Enforcement and Licensing (REAL) system, but the cost of such changes can be implemented as part of the OFR's existing budget resources.[48]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's provisions that would allow a consumer finance lender to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets may have a positive impact on consumer finance lenders and consumers. Shifting from maintaining liquid assets will free up capital for lending activity. In the event that consumer harm coincides with a consumer finance lender's bankruptcy, the surety bond, certificate of deposit, or letter of credit may provide consumers greater means of compensation as compared to the liquid assets. The bill's overall impact on the private sector, while likely positive, is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

[48] Office of Financial Regulation, *supra* note 16 at p. 5.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill expressly grants the Financial Services Commission[49] authority to prescribe by rule forms and procedures to implement the provisions relating to a consumer finance lender providing a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 1, 2021, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The bill authorizes a consumer finance lender to provide a letter of credit in lieu of the current statutory requirement to maintain liquid assets. The committee substitute clarifies that such letter of credit must be issued by a financial institution.

The staff analysis has been updated to reflect the committee substitute.

[49] The Financial Services Commission (commission) is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are the OFR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.

A bill to be entitled

An act relating to consumer finance loans; amending s. 516.03, F.S.; authorizing an applicant for a license to make and collect loans under the Florida Consumer Finance Act to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets; amending s. 516.031, F.S.; prohibiting a person licensed to make and collect consumer finance loans from charging prepayment penalties for loans; amending s. 516.05, F.S.; authorizing an applicant for a license to make and collect consumer finance loans or a licensee to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets; providing requirements for such bonds, certificates of deposit, and letters of credit; providing rulemaking authority; amending s. 516.07, F.S.; revising grounds for denial of license or disciplinary action; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 516.03, Florida Statutes, is amended to read:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

516.03 Application for license; fees; assets, bonds, certificates of deposit, or letters of credit; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in the form prescribed by rule of the commission. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or concerning any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and disciplinary and criminal history. The applicant must provide evidence of liquid assets of at least $25,000 or documents satisfying the requirements in s. 516.05(10). At the time of making such application the applicant shall pay to the office a nonrefundable biennial license fee of $625. Applications, except for applications to renew or reactivate a license, must also be accompanied by a nonrefundable investigation fee of $200. An

application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of $625, and any other fee prescribed by law. The commission may adopt rules requiring electronic submission of any form, document, or fee required by this act if such rules reasonably accommodate technological or financial hardship. The commission may prescribe by rule requirements and procedures for obtaining an exemption due to a technological or financial hardship.

Section 2. Subsection (6) is added to section 516.031, Florida Statutes, to read:

516.031 Finance charge; maximum rates.—

(6) PREPAYMENT PENALTIES PROHIBITED.—A licensee may not require a borrower to pay a prepayment penalty for paying all or part of the loan principal before the date on which the payment is due.

Section 3. Subsection (10) is added to section 516.05, Florida Statutes, to read:

516.05 License.—

(10)(a) In lieu of the $25,000 liquid asset requirement in s. 516.03(1):

1. An applicant or a licensee may provide to the office a surety bond in the amount of at least $25,000, issued by a bonding company or insurance company authorized to do business in this state.

2. A company with at least one currently licensed location must provide to the office a rider or surety bond, in the amount of at least $5,000 for each additional license, issued by a bonding company or insurance company authorized to do business in this state. However, in no event may the aggregate amount of the surety bond required for a company with multiple licenses exceed $100,000.

(b) In lieu of a surety bond, the applicant or the licensee may provide evidence of a certificate of deposit or an irrevocable letter of credit in the same amount of the surety bond required under paragraph (a). The certificate of deposit must be deposited in a financial institution, as defined in s. 655.005(1)(i). The letter of credit must be issued by a financial institution, as defined in s. 655.005(1)(i).

(c) The original surety bond, certificate of deposit, or letter of credit must be filed with the office, and the office must be named as beneficiary. The surety bond, certificate of deposit, or letter of credit must be for the use and benefit of any borrower who is injured by acts of a licensee involving fraud, misrepresentation, or deceit, including willful imposition of illegal or excessive charges; or misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower, where such acts are in connection with a loan made under this chapter. The office, or any claimant, may bring an action in a court of

competent jurisdiction on the surety bond, certificate of deposit, or letter of credit. The surety bond, certificate of deposit, or letter of credit must be payable on a pro rata basis, but the aggregate amount may not exceed the amount of the surety bond, certificate of deposit, or letter of credit.

(d) The surety bond, certificate of deposit, or letter of credit may not be canceled by the licensee, bonding or insurance company, or financial institution except upon notice to the office by certified mail. A cancellation may not take effect until 30 calendar days after receipt by the office of the notice.

(e) The bonding or insurance company or financial institution must, within 10 calendar days after it pays a claim, give notice to the office by certified mail of such payment with details sufficient to identify the claimant and the claim or judgment paid.

(f) If the principal sum of the surety bond, certificate of deposit, or letter of credit is reduced by one or more recoveries or payments, the licensee must furnish to the office a new or additional surety bond, certificate of deposit, or letter of credit so that the total or aggregate principal sum equals the amount required under this subsection. Alternatively, a licensee may furnish an endorsement executed by the bonding or insurance company or financial institution reinstating the required principal amount.

(g) The required surety bond, certificate of deposit, or letter of credit must remain in place for 2 years after the licensee ceases licensed operations in this state. During the 2-year period, the office may allow for a reduction or elimination of the surety bond, certificate of deposit, or letter of credit to the extent the licensee's outstanding consumer finance loans in the state are reduced.

(h) The commission may prescribe by rule forms and procedures to implement this subsection.

Section 4. Paragraph (b) of subsection (1) of section 516.07, Florida Statutes, is amended to read:

516.07 Grounds for denial of license or for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(b) Failure to maintain liquid assets of at least $25,000 or a surety bond, certificate of deposit, or letter of credit in the amount required by s. 516.05(10) at all times for the operation of business at a licensed location or proposed location.

Section 5. Paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is amended to read:

559.952 Financial Technology Sandbox.—

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000 or documents satisfying the requirements in s. 516.05(10), and the office's authority to investigate the applicant's background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall investigate the applicant's background.

3. Section 560.109, only to the extent that the section requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the subsection would prohibit a licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an

authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the subsection would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the factors under paragraph (5)(c) and the maximum number of

consumers authorized to receive the financial product or service under this section.

Section 6. This act shall take effect October 1, 2022.

CS/HB 223

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 223 Mobile Home Registration Periods
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Maney
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N, As CS	Johnson	Keating
2) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

Under Florida law, a mobile home is taxed as real property if the owner of the mobile home also owns the land on which the mobile home is permanently affixed. Mobile homes not taxed as real property must be registered with the Department of Highway Safety and Motor Vehicles (DHSMV) and pay a license tax. Based on the length of the mobile home, license taxes range from $20 to 80 per year.

The registration period for a mobile home is from January 1 through December 31, and the renewal period begins 31 days prior to expiration. For most motor vehicles owned by natural persons, the registration period is the first day of the owner's birth month through the last day of the month immediately preceding the owner's birth month in the succeeding year.

The bill revises the registration period for mobile homes owned by natural persons to match the registration period for most other motor vehicles. This new registration period will run from the first day of the owner's birth month through the last day of the month immediately preceding the owner's birth month in the succeeding year. For mobile homes not owned by a natural person (i.e., registered to a business), the registration period remains January 1 through December 31, with the renewal period the 31-day period before expiration.

In order to implement the change in registration periods, the bill requires DHSMV to give customers the option to renew their registrations on their dates of birth in 2024 or 2025.

The bill will have an insignificant negative fiscal impact on interest earned by state and local governments due to the change in timing of mobile home registration revenues. DSHMV will also incur programming costs associated with the change in registration periods, but these costs can be absorbed using existing resources.

The bill has an effective date of September 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Under Florida law, a mobile home is defined as a structure, transportable in one or more sections, which is eight body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.[1]

A mobile home is taxed as real property if the owner of the mobile home also owns the land on which the mobile home is permanently affixed. A mobile home taxed as real property is issued an "RP" series sticker to affix onto the mobile home.[2] In this situation, a mobile home owner must obtain a Declaration of Real Property from the county property appraiser. Then, the owner must present this declaration to the county tax collector and purchase an RP decal for his or her mobile home.[3]

A mobile home not taxed as real property must have a current license plate, issued by the Department of Highway Safety and Motor Vehicles (DHSMV), and pay the appropriate registration fee.[4]

Section 320.08(11), F.S., requires the following annual license tax to be paid for mobile homes required to have a license plate, based on the length of the mobile home:

Length of Mobile Home	Annual License Tax
Not exceeding 35 feet	$20
Over 35 feet, but not exceeding 40 feet	$25
Over 40 feet, but not exceeding 45 feet	$30
Over 45 feet, but not exceeding 50 feet	$35
Over 50 feet, but not exceeding 55 feet	$40
Over 55 feet, but not exceeding 60 feet	$45
Over 60 feet, but not exceeding 65 feet	$50
Over 65 feet	$80

For mobile homes subject to registration with DHSMV, the registration period begins January 1 and ends December 31, with the renewal period being the 31 days before expiration.[5] Therefore, all mobile homes registered with DHSMV must have their registration renewed in December. It is a violation of law to fail to display a current registration decal. Mobile homes that fail to properly display a current decal are subject to late fees or tangible personal property taxes. Mobile home registration and decal renewals may be conducted online, by mail, or at a county tax collector's office.[6]

According to DHSMV, during Fiscal Year 2020-2021, it processed 312,224 mobile home registration renewal transactions. Of these, 73,979 are registered to businesses. Additionally, approximately 600,000 mobile homes are registered as real property.[7]

For most motor vehicles owned by a natural person, the registration period begins the first day of the owner's birth month and ends the last day of the month immediately preceding the owner's birth month in the succeeding year. If the vehicle is registered in the name of more than one person, the birth month of the person whose name first appears on the registration is used to determine the registration

[1] S. 320.01(2)(a), F.S.
[2] S. 193.075(1), F.S. This provision does not apply to a mobile home that is being held for display by a licensed mobile home dealer or a licensed mobile home manufacturer and that is not rented or occupied.
[3] Department of Highway Safety and Motor Vehicles (DHSMV), Agency Analysis of 2022 House Bill 223, p. 2. (Nov. 29, 2021).
[4] *See* s. 320.08(11), F.S.
[5] S. 322.055(2), F.S.
[6] DHSMV, *supra* note 3.
[7] *Id.* at 3.

period. For vehicles subject to this registration period, the renewal period is the 30-day period ending at midnight on the vehicle owner's date of birth.[8]

Effect of the Bill

The bill changes the registration period of a mobile home owned by a natural person to the first day of the birth month of the owner through the last day of the month immediately preceding the owner's birth month in the succeeding year. If the vehicle is registered in the name of more than one person, the birth month of the person whose name first appears on the registration is used to determine the registration period. For a vehicle subject to this registration period, the renewal period is the 30-day period ending at midnight on the vehicle owner's date of birth. Thus, the bill conforms the registration period for mobile homes owned by natural persons to the registration period for most motor vehicles owned by natural persons.

For mobile homes not owned by a natural person (i.e., registered to a business), the registration period remains January 1 through December 31, with the renewal period the 31-day period before expiration. Registration renewals for these mobile homes will continue to take place in December.

The bill requires that beginning September 1, 2023, in order to implement the changes in registration periods, DHSMV give customers the option to renew their registrations on their dates of birth in 2024 or 2025. Customers whose dates of birth occur in the months of January through June may choose to renew for 1 to 18 months. Customers whose dates of birth occur in the months of July through December may choose to renew for 7 to 24 months.

The bill has an effective date of September 1, 2023.

B. SECTION DIRECTORY:

Section 1 Amends s. 320.055, F.S., relating to registration periods; renewal periods.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On December 3, 2021, the Revenue Estimating Conference determined that the bill will have an insignificant negative fiscal impact on state government revenues. This impact is associated with changes to interest revenues due to changes in the timing of registration renewals.[9]

2. Expenditures:

   DSHMV will incur programming costs related to its various computer systems; however, this programming can be done using existing DHSMV resources.[10]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[8] S. 320.01(1)(a), F.S.
[9] Revenue Estimating Conference (REC), Results of CS SB 754 (Dec. 3, 2021) http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2022/_pdf/page71-73.pdf (Dec. 3, 2021). (last visited Jan. 11, 2021).
[10] Email from Kevin Jacobs, Legislative Affairs Director, DHSMV, RE: HB 223 Mobile Home Registration-Fiscal (Jan. 10, 2022)

On December 3, 2021, the Revenue Estimating Conference determined that will have an insignificant negative fiscal impact on local government revenues. This impact is associated with changes to interest revenues due to changes in the timing of registration renewals.[11]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2022, the Tourism, Infrastructure & Energy Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Required DHSMV to give customers the option to renew their mobile home registration on their dates of birth in 2024 or 2025 so that the registration fees can be prorated.
- Changed the effective date of the bill to September 1, 2023.

This analysis is drafted to the committee substitute as approved by the Tourism, Infrastructure & Energy Subcommittee.

[11] REC, *supra* note 9.

A bill to be entitled

An act relating to mobile home registration periods; amending s. 320.055, F.S.; revising the registration and registration renewal periods for a mobile home owned by a natural person; requiring the Department of Highway Safety and Motor Vehicles, beginning on a specified date, to give customers the option to renew their registrations on their dates of birth in certain years; specifying permissible renewal periods for such renewals; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) and subsection (2) of section 320.055, Florida Statutes, are amended to read:

320.055 Registration periods; renewal periods.—The following registration periods and renewal periods are established:

(1)(a) For a motor vehicle subject to registration under s. 320.08(1), (2), (3), (4)(a) or (b), (5)(b), (c), (d), or (f), (6)(a), (7), (8), (9), ~~or~~ (10), or (11) and owned by a natural person, the registration period begins the first day of the birth month of the owner and ends the last day of the month immediately preceding the owner's birth month in the succeeding year. If such vehicle is registered in the name of more than one

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

person, the birth month of the person whose name first appears on the registration shall be used to determine the registration period. For a vehicle subject to this registration period, the renewal period is the 30-day period ending at midnight on the vehicle owner's date of birth.

(2) For a vehicle subject to registration under s. 320.08(11) and not owned by a natural person, the registration period begins January 1 and ends December 31. For a vehicle subject to this registration period, the renewal period is the 31-day period before ~~prior to~~ expiration.

Section 2. Beginning September 1, 2023, in order to implement the amendment made by this act to s. 320.055, Florida Statutes, the Department of Highway Safety and Motor Vehicles shall give customers the option to renew their registrations on their dates of birth in 2024 or 2025. Customers whose dates of birth occur in the months of January through June may choose to renew for 1 to 18 months. Customers whose dates of birth occur in the months of July through December may choose to renew for 7 to 24 months.

Section 3. This act shall take effect September 1, 2023.

HB 267

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 267 Swimming Pool Specialty Contracting Services
SPONSOR(S): McClure
TIED BILLS: **IDEN./SIM. BILLS:** SB 222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	13 Y, 0 N	Brackett	Anstead
2) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

Construction Contractors, including pool/spa contractors, are certified by or registered with the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation. Certified contractors can practice statewide and are licensed and regulated by the CILB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality. Registered contractors are required to register their license with the CILB.

Specialty contractors are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as drywall or demolition. Specialty contractor licenses are created by the CILB through rulemaking. Specialty contractors certified by the CILB are permitted to practice in any jurisdiction in the state. The CILB has created eight types of pool/spa specialty contractors.

In order to perform contracting in the state, a person must be certified or registered (licensed) as a contractor, be an employee of a licensed contractor, or fall under an exemption provided in current law.

The bill creates a new exemption to licensure requirements by allowing unlicensed persons to perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features, hot tubs, and spas without obtaining a specialty contractor license or local license.

The bill only allows the unlicensed person to perform the work if:

- the unlicensed person is under the supervision of a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor;
- the work is within the scope of the supervising contractor's license;
- the supervising contractor is responsible for the work; and
- the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, underground utility and excavation contractor, or electrical contractor.

The bill does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person, nor require the unlicensed person to be an employee of the supervising pool/spa contractor.

The bill does not appear to have a fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Contractors

Contractors are regulated by ch. 489, F.S., which outlines the law pertaining to contractors in the state of Florida. Part I of ch. 489, F.S., covers construction contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers electrical/alarm system contracting regulated by the Electrical Contractors' Licensing Board. Both boards are housed in the Department of Business and Professional Regulation (DBPR).

Construction contractors are either certified or registered by the CILB. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[1]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[2]

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued. Registered contractors must register their license with the CILB after obtaining a local license.[3]

In order to perform construction contracting in the state, a person must be certified or registered as a contractor, be an employee[4] of a certified or registered contractor, or fall under an exemption provided in current law.[5]

Swimming Pool/Spa Contractors

"Commercial pool/spa contractors" are individuals who are certified or registered to construct, repair, and service any public or private swimming pool, hot tub, or spa including:[6]

- Installing, repairing, or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment, interior finishes, package pool heaters, and perimeter piping and filter piping;
- Constructing equipment rooms or housing for pool/spa equipment; and
- The scope of work of a swimming pool/spa servicing contractor.

"Residential pool/spa contractors" are individuals who are certified or registered to construct repair, and service any residential swimming pool, hot tub, or spa. The scope of work is identical to the scope of

[1] S. 489.107, F.S.
[2] S. 489.105, F.S.
[3] Ss. 489.105, and 489.117, F.S.
[4] "Employee" means a person who receives compensation from and is under the supervision and control of an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law. S. 489.103(2)(b), F.S.
[5] Ss. 489.103, and 489.113, F.S.
[6] S. 489.105(3)(j), F.S.

work for commercial pool/spa contractors; however, residential pool/spa contractors may only work on residential swimming pools, hot tubs, and spas.[7]

"Swimming pool/spa servicing contractors" are individuals who are certified or registered to repair and service any public or private swimming pool, hot tub, or spa including:[8]

- Repairing or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment and interior refinishing;
- Reinstalling or adding pool heaters;
- Repairing or replacing perimeter piping and filter piping;
- Repairing equipment rooms or housing for pool/spa equipment; and
- Substantially or completing draining a swimming pool, or hot tub or spa, for the purpose of repair or renovation.

The scope of work for all three types of swimming pool/spa contractors does not include direct connections to a sanitary sewer system or to potable water lines.[9]

Water treatment or cleaning a pool or spa does not require a license unless the structural integrity of the pool or spa is affected, or equipment attached to the pool or spa must be substantially or completely disassembled or replaced in order to treat the water or clean the pool. Installing an aboveground pool also does not require a license.[10]

A contractor, including pool/spa contractors, must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, and air-conditioning work, to a contractor certified or registered in the respective category, unless the pool/spa contractor also holds a state certificate or registration in the respective category.[11]

In order to obtain certification as one of the swimming pool/spa contractors, a person must:[12]

- Apply to DBPR in writing;
- Be 18 years of age;
- Be of good moral character;
- Pass the examination for the certification sought; and
- Have one of the following:
    - A bachelor degree from a four year college in the appropriate field of engineering, architecture, or building construction, and one year of proven experience;
    - Four years of experience as a foreman or a skilled worker with at least one year as a foreman;
    - A combination of college and experience as a foreman or skilled worker that equals four years with at least one of the years as a foreman; or
    - One year of experience and 60 hours of instruction courses approved by the CILB; however, this only applies to swimming pool/spa servicing contractors.

[7] S. 489.105(3)(k), F.S.
[8] S. 489.105(3)(l), F.S.
[9] S. 489.105, F.S.
[10] Ss. 489.103(6), and 489.105, F.S.; DBPR, *Trust but Verify*, http://www.myfloridalicense.com/dbpr/reg/documents/trustbutverify_000.pdf?x40199 (last visited Oct. 26, 2021).
[11] S. 489.113(3), F.S.
[12] Ss. 489.111, & 489.113, F.S.

Swimming Pool/Spa Specialty Contractors

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as a drywall specialty license or a demolition specialty license. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[13]

The CILB has created eight types of pool/spa specialty contractor certifications. Pool/spa specialty contractors, except residential swimming pool/spa servicing specialty contractors, must work under contract with and under the supervision of a licensed swimming pool/spa contractor. However, they are not required to be employees of a licensed pool/spa contractor.[14]

The CILB has created the following eight types of pool/spa specialty contractors:[15]

- Swimming Pool Layout Specialty Contractor-
  - The scope of work is limited to the layout, shaping, steel installation, and rough piping of pools, spas, and hot tub shells.
- Swimming Pool Structural Specialty Contractor-
  - The scope of work is limited to the shaping and shooting of gunite, shotcrete, concrete, or similar product mix used in the construction of swimming pools and spas, and the installation of fiberglass shells and vinyl liners.
- Swimming Pool Excavation Specialty Contractors-
  - The scope of work is limited to the excavation and earthmoving for the installation of pools, spas, and hot tub shells.
- Swimming Pool Trim Specialty Contractor-
  - The scope of work is limited to the installation of tile and coping for pools, spas, hot tub shells, and decorative or interactive water displays.
- Swimming Pool Decking Specialty Contractor-
  - The scope of work is limited to the construction and installation of concrete flatwork, pavers and bricks, retaining walls, and footings associated with the construction of pools, spas, and hot tub shells.
- Swimming Pool Piping Specialty Contractor-
  - The scope of work is limited to the installation of piping or the installation of circulating, filtering, disinfecting, controlling, or monitoring equipment and devices used in the construction of pools, spas, hot tubs, and decorative or interactive water displays or areas.
- Swimming Pool Finishes Specialty Contractor-
  - The scope of work is limited to the coating or plastering of the interior surfaces of pools, spas, or hot tub shells.
- Residential Swimming Pool/Spa Servicing Specialty Contractor-
  - The scope of work is identical to the scope of work for swimming pool/spa servicing contractors; however, they may only work on residential swimming pools, hot tubs, and spas.

In order to obtain one of the certified specialty pool/spa contractor a person must:[16]

- Submit a written application to the CILB;
- Be at least 18 years of age;
- Be of good moral character;
- Pass a written examination for the specialty pool/spa contractor category sought; and

[13] S. 489.105(3)(q), F.S.
[14] Rule 61G4-15.032, F.A.C.; Rule 61G4-15.040, F.A.C.
[15] *Id*.
[16] Rule 61G4-15.032, F.A.C.; Email from Cody McCloud, Legislative Affairs Director, DBPR, RE: Pool Contractor Information, (Oct. 26, 2021).

- Demonstrate four years of experience in the specialty pool/spa contractor category sought, or one year of experience and 60 hours of instruction courses approved by the CILB; however, the one year of experience only applies to residential swimming pool/spa servicing contractors.

Exemptions from Licensure

An unlicensed person may perform work that falls under the scope of contracting if they fall under an exemption provided in current law. Currently, there are 24 exemptions provided in current law, including:[17]

- a person performing contracting if it is casual, minor, or inconsequential in nature, and the aggregate contract price for all labor and materials is less than $2,500, subject to certain requirements. This is referred to as the handyman exemption;

- an owner building or improving one or two-family residences, farm outbuildings, or improving commercial buildings at a cost that does not exceed $75,000, subject to certain requirements;

- an employee of an apartment community or apartment management company who makes minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems subject to certain requirements;

- a person who sells or installs any finished products, materials, or articles of merchandise that are not fabricated into and do not become a permanent part of a structure such as awnings; and

- an employee of the United States, the state, or any municipality, county, irrigation district, reclamation district, or political subdivision, except school boards, state university boards of trustees, and community college boards of trustee, subject to certain requirements.

Another exemption allows an unlicensed person to perform contracting if the person is under the supervision of licensed general, building, or residential contractor, and the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor.

The work must be within the scope of the supervising contractor's license, and the supervising contractor must also be responsible for the work. The unlicensed person must have a direct contract with the contractor. However, this is an exemption from state licensure requirements and it does not affect the ability of local governments to impose licensing requirements on unlicensed persons.[18]

Effect of the Bill

The bill creates an additional exemption to contractor licensure. The bill provides that unlicensed persons may perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features,[19] hot tubs, and spas without obtaining a specialty contractor license or local license.

[17] S. 489.103, F.S.

[18] S. 489.113(2), F.S.; *Florida Home Builders Association v. St. Johns County*, 914 So. 2d 1035 (Fla. 5th DCA 2005).

[19] The Florida Building Code defines "interactive water features" as structure designed to allow for recreational activities with recirculated, filtered, and treated water; but having minimal standing water. Water from the interactive fountain type features is collected by gravity below grade in a collector tank or sump. The water is filtered, disinfected and then pumped to the feature spray discharge heads. The collector tank and water filtration features required make this structure a type of public swimming pool. Section 454 of the Seventh edition of the Florida Building Code (Building).

The bill only allows the unlicensed person to perform the work if:

- the unlicensed person is under the supervision of a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor;
- the work is within the scope of the supervising contractor's license;
- the supervising contractor is responsible for the work; and
- the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, underground utility and excavation contractor, or electrical contractor.

The bill does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person performing the specialty contracting services, or require the unlicensed person to be an employee of the supervising pool/spa contractor.

The bill provides that it does not limit other current exemptions to licensure. The bill also provides that it may not be construed to expand the scope of work allowed by a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor to provide plumbing or electrical services, which requires a separate contractor license.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.117, F.S., creating an exemption to licensure requirements.

Section 2. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector by allowing persons, who are under the supervision of licensed pool/spa contractors, to perform work on pools, spas, hot tubs, and interactive water features without having to obtain a license. This may also result in certain projects being completed in less time and at a lower cost to consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

No.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to swimming pool specialty contracting services; amending s. 489.117, F.S.; authorizing certain persons under the supervision of specified licensed contractors to perform certain specialty contracting services for commercial or residential swimming pools, interactive water features, hot tubs, and spas; providing that such supervision does not require a direct contract between those persons; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) is added to subsection (4) of section 489.117, Florida Statutes, to read:

489.117 Registration; specialty contractors.—

(4)

(e) Any person who is not certified or registered may perform the work of a specialty contractor whose scope of practice is limited to the type of work specified under s. 489.105(3)(j), (k), or (l) for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features as defined in the Florida Building Code, hot tubs, and spas without obtaining a local license or certification as a specialty contractor if he or she

CODING: Words stricken are deletions; words underlined are additions.

is supervised by a contractor who is certified or registered under s. 489.105(3)(j), (k), or (l); the work is within the scope of the supervising contractor's license; the supervising contractor is responsible for the work; and the work does not require certification or registration under s. 489.105(3)(d)-(i), (m)-(o), or s. 489.505. Such supervision does not require a direct contract between the contractor certified or registered under s. 489.105(3)(j), (k), or (l) and the person performing the work, or for the person performing the work to be an employee of the contractor certified or registered under s. 489.105(3)(j), (k), or (l). This paragraph does not limit the exemptions provided in s. 489.103 and may not be construed to expand the scope of a contractor certified or registered under s. 489.105(3)(j), (k), or (l) to provide plumbing or electrical services for which certification or registration is required by this part or part II.

Section 2. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 269 Natural Gas and Public Utility Petitions for Rate Relief
SPONSOR(S): Byrd and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 0 N	Neuffer	Keating
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Lee	Topp
3) Commerce Committee		Neuffer	Hamon

SUMMARY ANALYSIS

The bill increases the threshold under which investor-owned electric utilities (IOUs) are eligible to have a petition for rate relief considered by the Florida Public Service Commission (PSC) under informal procedures referred to as proposed agency action (PAA) procedures. Under current law, only IOUs with less than 500 gigawatt hours (GWh) in annual electricity sales are eligible to request use of these PAA procedures for rate cases. No Florida IOU currently has annual sales below this threshold. The bill increases the annual sales threshold to 1,000 GWh, which will make one IOU, Florida Public Utilities Company (FPUC), eligible to request use of PAA procedures for a rate case.

The bill may have an insignificant positive impact on state government expenditures. The bill will not impact state government revenues or local government revenues or expenditures.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Public Service Commission (PSC) is an arm of the Legislature, created to oversee utility services to the people of Florida.[1] Among its powers, the PSC has broad jurisdiction over the rates and service of investor-owned electric utilities (IOUs) in Florida.[2] As required by law, the PSC sets base rates that are designed to allow each IOU to recover its legitimate costs of providing service,[3] including a return on the IOU's prudent capital investments.[4]

Base rates are changed through "rate case" proceedings on an as-needed basis. When an IOU aims to change its base rates, it must petition the PSC and file documents that satisfy the minimum filing requirements (MFRs) established by the PSC for a rate case.[5] A formal hearing process ensues, including a discovery process, an evidentiary hearing, customer service hearings, and post-hearing brief submissions. The PSC must take final action and issue its final order on the IOU's petition within twelve months of the IOU's completed MFR filing,[6] though the PSC typically takes final action and issues its final order within eight months. This rate case process is typically resource intensive. Because an IOU's rate case expenses are considered a legitimate cost of providing service, these expenses are recovered through customer rates.

Under current law, an IOU with less than 500 gigawatt hours (GWh) in annual sales may request that its rate case be handled by the PSC under informal procedures referred to as proposed agency action (PAA) procedures. PAA procedures require less time and resources than the formal hearing process. Under PAA procedures, the IOU still must file documents that satisfy the MFRs, and customer service hearings are still held in the IOU's service territory. PSC staff may request data from the IOU, and the Office of Public Counsel[7] may appear as a party in the case and conduct discovery. Discovery from third parties is not permitted under PAA procedures. After the PSC hears input from its staff, the IOU, and any other interested persons, it votes on the IOU's rate request and memorializes its vote in writing as a PAA order. The order must be issued within five months of the IOU's completed filing of the MFRs.[8] Any person whose substantial interests are affected by the PAA order may protest the order and initiate the formal hearing process with respect to the specific matters protested. If no such protest is filed, the order shall be entered and become final agency action, subject only to appeal.[9]

At present, no IOU has annual sales below the 500 GWh threshold. When the threshold was enacted, Florida Public Utilities Company (FPUC), an IOU, operated two separate divisions, one in Marianna and one in Fernandina Beach. Each division was regulated as a separate entity for the purpose of setting rates. In 2004, the PSC approved a rate settlement agreement consolidating the rates and charges of the two divisions into one entity. From the time that the 500 GWh threshold was enacted until FPUC's consolidation in 2004, the two independent divisions of FPUC were the only IOUs eligible

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[1] S. 350.001, F.S.

[2] *See, e.g.,* ss. 366.01, 366.04(1), 366.041, 366.05(1), and 366.06, F.S. There are four IOUs in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, and Florida Public Utilities Company. The former Gulf Power Company merged into Florida Power & Light Company as of January 1, 2021.

[3] Base rates make up just one component of an IOU's rates. Other mechanisms are established by statute or PSC rule or order to allow IOUs to recover specific types of costs not included in base rates, such as fuel costs and certain environmental compliance costs.

[4] Ss. 366.041(1) and 366.06(1), F.S.

[5] *See* Rr. 25-6.043 and 25-6.140, F.A.C.

[6] S. 366.06(3), F.S.

[7] *See* S. 350.0611, F.S. (tasking the Office of the Public Counsel with providing legal representation for the general public of Florida in proceedings before the PSC and in other utility related matters).

[8] *See* S. 366.06(4), F.S.

[9] *See* Order Nos. PSC-08-0436-PAA-GU (PAA Order) and PSC-08-0849-CO-GU (Consummating Order), issued July 8 and August 1, 2008, in Docket No. 20070592-GU, In re: Petition for rate increase by St. Joe Natural Gas Company, Inc.

to request use of PAA procedures for rate cases. After the consolidation, FPUC's annual sales surpassed the 500 GWh threshold, and it became ineligible to request use of PAA procedures for its rate cases.[10]

As shown in the following table, FPUC's annual electricity sales are substantially less than any other IOU within the state:

2020 Florida IOU Electricity Sales	
IOU	**Sales (GWh)**
Florida Power & Light	113,531
Duke Energy Florida	39,230
Tampa Electric	19,954
Gulf Power	10,635
FPUC	650

Effect of Proposed Changes

The bill increases the eligibility threshold under which an IOU may request that its rate case be handled informally through PAA procedures, from 500 GWh to 1,000 GWh. Under this change, Florida Public Utilities Company (FPUC) would regain its eligibility to use the PAA procedures.

B. SECTION DIRECTORY:

Section 1. Amends s. 366.06, F.S., relating to the procedures for fixing and changing rates.

Section 2. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill will likely have an insignificant positive fiscal impact on PSC expenditures due to potential cost savings realized by utilizing a proposed agency action (PAA) procedure, which is a more expedited disposition of a petition for rate relief, instead of a lengthy direct-to-hearing rate case that requires more time and staffing resources.[11]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[10] Email from Kaley Slattery, Legislative Director, Florida Public Service Commission, RE: Recorded year that FPUC exceeded 500 GWh in annual sales (Oct. 27, 2021).
[11] Florida Public Service Commission, Agency Analysis of 2022 House Bill 269, pg. 3 (Oct. 21, 2021).

To the extent that FPUC is able to reduce its rate case expenses through the use of PAA procedures, these savings will be passed along to its ratepayers. The bill could also offer potential benefits to newly-qualifying utilities resulting from a PAA instead of a direct-to-hearing rate case.[12]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

[12] *Id.*

A bill to be entitled

An act relating to natural gas and public utility petitions for rate relief; amending s. 366.06, F.S.; revising the number of gigawatt hours that certain utilities must sell to petition for rate relief using the Public Service Commission's proposed agency action procedure; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 366.06, Florida Statutes, is amended to read:

366.06 Rates; procedure for fixing and changing.—

(4) A natural gas utility or a public electric utility whose annual sales to end-use customers amount to less than 1000 ~~500~~ gigawatt hours may specifically request the commission to process its petition for rate relief using the agency's proposed agency action procedure, as prescribed by commission rule. The commission shall enter its vote on the proposed agency action within 5 months of the commencement date for final agency action. If the commission's proposed action is protested, the final decision must be rendered by the commission within 8 months of the date the protest is filed. At the expiration of 5 months following the commencement date for final agency action, if the commission has not taken action or if the commission's

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action is protested by a party other than the utility, the utility may place its requested rates into effect under bond, escrow, or corporate undertaking subject to refund, upon notice to the commission and upon filing the appropriate tariffs. The utility must keep accurate records of amounts received as provided by subsection (3).

Section 2. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 273 Money Services Businesses
SPONSOR(S): Insurance & Banking Subcommittee, Aloupis
TIED BILLS: **IDEN./SIM. BILLS:** SB 486

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation's (OFR) Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs. Currently, virtual currency is not *expressly* within ch. 560, F.S., though in the last 7 years OFR has received over 70 petitions for declaratory statement relating to whether and how virtual currency is regulated under that chapter.

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. In some environments, it operates like "fiat" currency (i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance), but it does not have legal tender status in any jurisdiction. Bitcoin is one example of a virtual currency.

In a recent case, the Third District Court of Appeal's holdings related to bitcoin illustrate the need to expressly provide whether and how virtual currency falls within ch. 560, F.S., as well as the need to clarify certain definitions in that chapter. In particular, the court held that the definition of "money transmitter" requires licensure for third-party intermediaries as well as for individuals in a two-party transaction.

Within ch. 560, F.S., the bill adds a definition for "virtual currency" and amends the definitions of "electronic instrument", "monetary value", "money transmitter", "payment instrument", and "stored value". The amendments to these definitions provide clarity as to their meaning; make virtual currency expressly subject to money transmitter regulations but not regulations for other types of licenses under ch. 560, F.S.; and clarify that a money transmitter license is only required for a person acting as an intermediary between two parties, meaning that neither person in a two-party transaction is required to be licensed. As a result of the addition of virtual currency to ch. 560, F.S., the bill makes conforming changes to the prohibition on unlicensed activity, adds rulemaking authority for recordkeeping requirements related to virtual currency, and amends the permissible investments statute. Without a change to the permissible investments statute, the effect would be to require a money transmitter that transmits virtual currency to not only have control over the virtual currency being transmitted but also hold the equivalent value in cash or other enumerated assets. Instead, the bill would only require that, during the period of transmission, the money transmitter must hold virtual currency of the same type and amount owed or obligated to the other location or person on the receiving end of the transmission. Lastly, the bill makes conforming changes under the Financial Technology Sandbox in s. 559.952, F.S., as well as other conforming changes within ch. 560, F.S., to reflect the addition of virtual currency to money transmitter regulations.

The bill has no fiscal impact on local governments and an indeterminate fiscal impact on the private sector and the state. See *Fiscal Analysis & Economic Impact Statement*.

The bill provides an effective date of January 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Money Transmitters and Payment Instrument Sellers

State Regulation

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The Division of Consumer Finance within OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs, and both are regulated under part II of ch. 560, F.S.

A money transmitter receives currency,[2] monetary value,[3] or payment instruments[4] for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.[5] A payment instrument seller sells, issues, provides, or delivers a payment instrument.[6] State and federally chartered depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.[7] Currently, virtual currency is not *expressly* within ch. 560, F.S., though in the last 7 years OFR has received over 70 petitions for declaratory statement relating to whether and how virtual currency is regulated under that chapter.

An applicant for an MSB license under ch. 560, F.S., must file an application with OFR and pay an application fee of $375.[8] The license must be renewed every 2 years by paying a renewal fee of $750.[9] Money transmitters and payment instrument sellers may operate through authorized vendors by providing OFR with specified information about the authorized vendor and by paying a fee of $38 per authorized vendor location at the time of application and renewal.[10] A money transmitter or payment instrument seller may also engage in the activities authorized for check cashers[11] and foreign currency exchangers[12] without paying additional licensing fees.[13]

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[1] S. 20.121(3)(a)2., F.S.
[2] The term "currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. S. 560.103(11), F.S.
[3] The term "monetary value" means a medium of exchange, whether or not redeemable in currency. S. 560.103(21), F.S.
[4] The term "payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. S. 560.103(29), F.S.
[5] S. 560.103(23), F.S.
[6] S. 560.103(30) and (34), F.S.; definition of "payment instrument", *supra* note 4.
[7] S. 560.104, F.S.
[8] Ss. 560.141 and 560.143, F.S.
[9] *Id.*; s. 560.142, F.S.
[10] *Id.*; ss. 560.203, 560.205, and 560.208, F.S.
[11] The term "check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks. S. 560.103(6), F.S.
[12] The term "foreign currency exchanger" means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. S. 560.103(17), F.S.
[13] S. 560.204(2), F.S.

A money transmitter or payment instrument seller must at all times:

- Have a net worth of at least $100,000 and an additional net worth of $10,000 per location in this state, up to a maximum of $2 million.[14]
- Have a corporate surety bond in an amount between $50,000 and $2 million depending on the financial condition, number of locations, and anticipated volume of the licensee.[15] In lieu of a corporate surety bond, the licensee may deposit collateral such as cash or interest-bearing stocks and bonds with a federally insured financial institution.[16]
- Possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States.[17] OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit.[18]

While MSBs are generally subject to federal anti-money laundering laws,[19] Florida law contains many of the same anti-money laundering reporting requirements and recordkeeping requirements with the added benefit of state enforcement. An MSB applicant must have an anti-money laundering program that meets the requirements of federal law.[20]

Pursuant to the Florida Control of Money Laundering in Money Services Business Act, an MSB must maintain certain records of each transaction involving currency or payment instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.[21] An MSB must keep records of each transaction occurring in this state that it knows to involve currency or other payment instruments having a greater value than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.[22] OFR may take administrative action against an MSB for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.[23] OFR may also take administrative action against an MSB for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.[24]

A money transmitter or payment instrument seller must maintain specified records for at least 5 years, including the following:[25]

- A daily record of payment instruments sold and money transmitted.
- A general ledger containing all asset, liability, capital, income, and expense accounts, which must be posted at least monthly.
- Daily settlement records received from authorized vendors.
- Monthly financial institution statements and reconciliation records.
- Records of outstanding payment instruments and money transmitted.
- Records of each payment instrument paid and money transmission delivered.
- A list of the names and addresses of the licensee's authorized vendors.
- Records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates.
- Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

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[14] S. 560.209, F.S.
[15] *Id.*
[16] *Id.*
[17] S. 560.210, F.S.
[18] *Id.*
[19] 31 C.F.R. pt. 1022.
[20] S. 560.1401, F.S.
[21] S. 560.123, F.S.
[22] *Id.*
[23] S. 560.114, F.S.
[24] *Id.*
[25] Ss. 560.1105 and 560.211, F.S.

Recent Case Law: State v. Espinoza

Through an online directory of buyers and sellers of bitcoin, a detective with the Miami Beach Police Department arranged to meet a person with the username Michelhack, which turned out to be the defendant Michell Espinoza, in order to purchase bitcoin.[26] The detective arranged multiple transactions with the defendant as follows:

- During the course of the first transaction, the detective made clear his desire to remain anonymous and implied that he was involved in illicit activity.[27] The detective paid Mr. Espinoza $500 in cash and received a portion of a bitcoin valued at $416.12, thus earning Mr. Espinoza a profit of $83.67.[28]
- The detective arranged a second transaction with Mr. Espinoza during which he told Mr. Espinoza that he needed the bitcoins to pay for stolen credit card numbers, since he was in the business of buying and selling stolen credit card numbers from Russian sellers.[29] The detective paid Mr. Espinoza $1,000 in cash and received one bitcoin, thus earning Mr. Espinoza a profit of approximately $167.56.[30]
- The detective then arranged a third transaction with Mr. Espinoza.[31] The detective inquired how fast the transaction could be completed because his "Russian buddies" would not send him his "[stuff] until they get the coin."[32] The detective deposited $500 into Mr. Espinoza's bank account, and Mr. Espinoza transferred 0.54347826 bitcoins to the detective.[33]
- In the fourth and final transaction, the detective negotiated the transfer of bitcoins worth $30,000 and represented to Mr. Espinoza that it was to pay for a new batch of stolen credit card numbers acquired from a recent data breach.[34] Although Mr. Espinoza questioned the authenticity of the $30,000 roll of money that the detective gave him, he otherwise remained ready and willing to consummate the entire transaction.[35] Mr. Espinoza was then taken into custody.[36]

Mr. Espinoza was charged with: (1) one count of unlawfully engaging in the business of a money transmitter and acting as a payment instrument seller as a result of not being licensed to conduct such activity (Count one); and (2) two counts of money laundering (Counts two and three).[37] Mr. Espinoza filed a motion to dismiss as to all counts, which the trial court granted for the following reasons:

- As to Count one, the trial court found that neither bitcoin nor Mr. Espinoza's conduct fell within the ambit of ch. 560, F.S., requiring registration as a money services business.[38] Regarding Mr. Espinoza's conduct, the trial court reasoned that a "money transmitter" would necessarily operate like a middleman in a financial transaction, much like how Western Union accepts money from person A, and at the direction of person A, transmits it to person or entity B.[39] Mr. Espinoza was not acting as a middleman; rather the transactions with the detective were two-party transactions in which Mr. Espinoza sold his own bitcoin to the detective and received U.S. Dollars in return.
- As to Counts two and three, the trial court found that the conduct at issue qualifies as a "financial transaction" under the money laundering statutes but that Mr. Espinoza lacked the requisite intent to be guilty of money laundering.[40]

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[26] State v. Espinoza, 264 So. 3d 1055, 1059-60 (Fla. 3d DCA 2019).
[27] *Id.* at 1060.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.* at 1060-61.
[35] *Id.* at 1061.
[36] *Id.*
[37] *Id.* at 1057 and 1061.
[38] *Id.* at 1057 and 1061.
[39] *Id.* at 1065.
[40] *Id.* at 1057 and 1061.

The state then appealed the trial court's dismissal of the information.[41] On appeal, the Third District Court of Appeal (court) held that:

- The trial court erred in dismissing Count one because Mr. Espinoza acted as both a money transmitter and a payment instrument seller and, as such, was required to be licensed as a money services business.[42]
- The trial court erred in dismissing Counts two and three on the basis that Espinoza lacked the requisite intent to be guilty of money laundering.[43]

In the reasoning as to Count one, the court determined that bitcoin is both "monetary value" and a "payment instrument" under ch. 560, F.S.[44] This interpretation illustrates the need to expressly provide whether and how virtual currency falls within ch. 560, F.S. The court's interpretation also illustrates the need to clarify the definition of "payment instrument". "Monetary value" is akin to "currency" within ch. 560, F.S. Conceptually, a payment instrument is an instrument *denominated in* currency (or monetary value), but currency and monetary value should not in and of themselves be a payment instrument.

Another important aspect of the Espinoza case is that in determining that Mr. Espinoza acted as a money transmitter, the court addressed whether the definition of "money transmitter" covers only third-party intermediaries, in which case Mr. Espinoza selling his own bitcoins to the detective would not have run afoul of the prohibition on unlicensed money transmission.[45] On this point, the court held that "[t]he statute's plain language clearly contains no third party transmission requirement in order for an individual's conduct to fall under the 'money transmitter' definition. As such, we decline to add any third party or 'middleman' requirement to the money transmitter definition found in section 560.103(23)."[46] The court's holding illustrates the need to clarify the definition of "money transmitter" such that a money transmitter license is only required for a person acting an intermediary between two parties, but neither person in a two-party transaction is required to be licensed.[47]

Virtual Currency

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.[48] In some environments, it operates like "real" currency[49] (i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance), but it does not have legal tender status in any jurisdiction.[50] Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as "convertible" virtual currency.[51] Bitcoin is one example of a convertible virtual currency, as it can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies.[52]

Virtual currencies generally consist of computers operating the network software (nodes) that enable, validate, and store transaction records on a distributed digital ledger (a blockchain).[53] To transfer an

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[41] *Id.* at 1061.
[42] *Id.* at 1057 and 1061-62.
[43] *Id.*
[44] *Id.* at 1064.
[45] *Id.* at 1065.
[46] *Id.* (citations omitted).
[47] This is consistent with the historical interpretation of the money transmitter definition by OFR and industry, and it avoids the untenable result of requiring persons in a two-party transaction to be licensed. Additionally, this is consistent with the substance of the money transmitter regulations.
[48] IRS, *Virtual Currencies: What is virtual currency?*, https://www.irs.gov/businesses/small-businesses-self-employed/virtual-currencies (last visited Jan. 13, 2022).
[49] Also often referred to as "fiat" currency.
[50] IRS, *supra* note 48.
[51] *Id.*
[52] *Id.*
[53] FinCEN, *Notice of Proposed Rulemaking: Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets*, https://www.govinfo.gov/content/pkg/FR-2020-12-23/pdf/2020-28437.pdf (last visited Jan. 13, 2022).

asset on a blockchain, a person enters an alphanumeric code known only to the transferor (a private key) into a cryptographic hash function enabled by the network software, which allows the transferor to request that the network software validate a new entry on the ledger showing that control of an asset has been assigned to the recipient.[54] Once the network software has validated this transfer, the ledger is altered and the recipient may transfer the asset to another recipient using their own private key.[55] Ledger entries are cryptographically secured, and accounts are identified on a blockchain by alphanumeric "public keys"—not by the owner's name.[56]

Some persons use the services of a third-party to acquire or transact in virtual currency.[57] For example, certain third-parties provide custody services for their customers' virtual currency in so called "hosted wallets."[58] In such arrangements, the third-party wallet host may execute transactions on a blockchain on behalf of a customer using a private key controlled by the third-party wallet host.[59] Other persons do not use the services of such a third-party, in which case they use the private key controlling their virtual currency to transact directly on a blockchain.[60] Such persons may store the private key in a software program or written record, often referred to as an "unhosted wallet."[61]

Virtual currency networks present opportunities as well as risks.[62] The G7 Finance Ministers and Central Bank Governors recently noted that "[t]he widespread adoption of digital payments . . . has the potential to address frictions in existing payment systems by improving access to financial services, reducing inefficiencies, and lowering costs."[63] At the same time, however, virtual currencies are used in illicit financial activity that presents substantial national security concerns.[64]

Determining the true amount of illicit activity that is conducted in virtual currency is challenging.[65] One industry estimate is that approximately 1 percent of overall market transaction volume, or $10 billion, in virtual currency activity conducted globally in 2019 was illicit.[66] This figure, however, may underestimate such illicit activity.[67] Despite significant underreporting due to compliance challenges in parts of the virtual currency sector, in 2019, FinCEN received approximately $119 billion in suspicious activity reporting associated with virtual currency activity taking place wholly or in substantial part in the United States.[68] By industry measures, this would equate to approximately 11.9 percent of total virtual currency market activity being relevant to a possible violation of law or regulation.[69]

Virtual Currency in Florida Statutes

Currently, Florida law includes virtual currency as a type of monetary instrument under the Florida Money Laundering Act.[70] Thus, Florida law criminalizes the use of virtual currency for illicit purposes in the same manner that the law criminalizes use of fiat currency for illicit purposes. Under that act, "'virtual currency' means a medium of exchange in electronic or digital format that is not a coin or

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[54] *Id*.
[55] *Id*.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id*.
[60] *Id*.
[61] *Id*.
[62] *Id.*
[63] *Id*. (citing the G7 Finance Ministers and Central Bank Governors' Statement on Digital Payments on Oct. 13, 2020).
[64] FinCEN Notice of Proposed Rulemaking, *supra* note 53.
[65] *Id*.
[66] *Id*. (citing Chainalysis, *2020 Crypto Crime Report* (Jan. 2020), https://go.chainalysis.com/2020-CryptoCrime-Report.html).
[67] FinCEN Notice of Proposed Rulemaking, *supra* note 53.
[68] *Id*. FinCEN notes that a significant majority of this $119 billion related to suspicious activity that took place before 2019 based on subsequent lookbacks. *Id.* FinCEN anticipates that in the future it will receive additional suspicious activity reporting for activity that took place in 2019 but that has not yet been recognized as suspicious. *Id.*
[69] *Id*. Suspicious activity is not a clear indication of a crime but is activity that is potentially illicit. *Id*.
[70] S. 896.101, F.S.

currency of the United States or any other country."[71] This definition was added in 2017[72] and is the only instance of "virtual currency" in Florida Statutes.

Federal Regulation of MSBs

The Financial Crimes Enforcement Network of the United States Department of Treasury (FinCEN) serves as the nation's financial intelligence unit and is charged with safeguarding the United States financial system from the abuses of money laundering, terrorist financing, and other financial crimes.[73] The basic concept underlying FinCEN's core activities is "follow the money" because criminals leave financial trails as they try to launder the proceeds of crimes or attempt to spend their ill-gotten profits.[74] To that end, FinCEN administers the Bank Secrecy Act (BSA).[75] BSA regulations require banks and other financial institutions, including MSBs, to take a number of precautions against financial crime.[76] BSA regulations require financial institutions to establish an anti-money laundering program (such as verifying customer identity), maintain certain records (such as transaction related data), and file reports (such as suspicious activity reports and currency transaction reports) that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations, as well as in certain intelligence and counter-terrorism matters.[77]

Generally, an MSB is required to register with FinCEN, regardless of whether the MSB is licensed with the state, if it conducts more than $1,000 in business with one person in one or more transactions on the same day, in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing, or exchange.[78] However, an MSB must register with FinCEN if it provides money transfer services in any amount.[79]

BSA regulations define "money transmission services" as "the acceptance of currency, funds, or *other value that substitutes for currency* from one person and the transmission of currency, funds, or *other value that substitutes for currency* to another location or person by any means."[80] Depending on the facts and circumstances surrounding a transaction, a person transmitting virtual currency may fall under FinCEN's BSA regulations.[81]

Federal law criminalizes money transmission if the money transmitting business:[82]

- Is operated without a license in a state where such unlicensed activity is subject to criminal sanctions;
- Fails to register with FinCEN; or
- Otherwise involves the transportation or transmission of funds that are known to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.

Effect of the Bill

Definitions (Section 2)

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[71] *Id*.
[72] Ch. 2017-155, Laws of Fla.
[73] FinCEN, *What We Do*, https://www.fincen.gov/what-we-do (last visited Jan. 13, 2022).
[74] *Id.*
[75] Many of the federal provisions of the BSA have been codified in ch. 560, F.S., which has provided OFR with additional compliance and enforcement tools.
[76] FinCEN, s*upra* note 73.
[77] *Id.*
[78] 31 C.F.R. §§ 1010.100 and 1022.380.
[79] *Id.*
[80] 31 C.F.R. § 1010.100 (emphasis added).
[81] FinCEN Guidance, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001* (May 9, 2019), https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf (last visited Jan. 13, 2022); FinCEN Notice of Proposed Rulemaking, *supra* note 53.
[82] 31 U.S.C. § 1960.

The bill makes the following changes to definitions in ch. 560, F.S.:

- Amends the definition of "electronic instrument" to replace the undefined term "money" with the defined term "currency". Leaving an undefined term such as "money" in statute may lead to confusion as to whether the term includes virtual currency. The definition of "electronic instrument" is also reworded for clarity.
- Excludes virtual currency from the definition of "monetary value" in order to narrow the regulation of virtual currency to only regulations for money transmitters but not other types of licenses under ch. 560, F.S.
- Amends the definition of "money transmitter" to expressly include virtual currency and to clarify that a money transmitter license is only required for a person acting an intermediary between two parties if the intermediary has the ability to unilaterally execute or indefinitely prevent a transaction; neither person in a two-party transaction is required to be licensed.
- Amends the definition of "payment instrument" to replace the undefined term "money" with the defined term "currency". Leaving an undefined term such as "money" in statute may lead to confusion as to whether the term includes virtual currency. The definition of "payment instrument" is also amended to clarify that the term means an instrument that is *used for* the transmission, exchange, or payment of currency or monetary value, but a payment instrument is not the currency or monetary value itself.
- Amends the definition of "stored value" to replace the undefined term "funds" with the defined term "currency". Leaving an undefined term such as "funds" in statute may lead to confusion as to whether the term includes virtual currency.
- Adds the following definition of "virtual currency" – Virtual currency means a medium of exchange in electronic or digital format that is not currency. The term does not include a medium of exchange in electronic or digital format that is used:
    - Solely within online gaming platforms with no market or application outside such gaming platforms; or
    - Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants but cannot be converted into or redeemed for currency or another medium of exchange.

Prohibition on Unlicensed Activity (Section 5)

The bill amends the prohibition on unlicensed money transmitter activity and payment instrument selling in order to better align the wording with the definition of payment instrument seller. One element of the prohibition is that a person is doing such activity *for compensation*, and "compensation" includes profit or loss on the exchange of currency. The bill adds that "compensation" includes profit or loss on the exchange of monetary value or virtual currency.

Permissible Investments (Section 8)

The bill amends the permissible investments statute in relation to virtual currency. Under current law, a money transmitter must possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions. Without an amendment to this statute, the effect would be to require a money transmitter that transmits virtual currency to not only have control over the virtual currency being transmitted but also hold the equivalent value in cash or other enumerated assets. Instead, the bill would only require that, during the period of transmission, the money transmitter must hold virtual currency of the same type and amount owed or obligated to the other location or person on the receiving end of the transmission.

Required Records (Section 9)

The bill adds rulemaking authority for recordkeeping requirements related to virtual currency.

Conforming Changes (Sections 1, 3, 4, 6, 7, 9, 10)

The bill amends the Financial Technology Sandbox in s. 559.952, F.S., in order to conform to changes made to s. 560.204, F.S. The bill also conforms portions of ss. 560.123, 560.125, 560.208, 560.2085, 560.211, 560.212, F.S., to reflect the addition of virtual currency to money transmitter regulations.

Effective Date (Section 11)

The bill provides an effective date of January 1, 2023.

B. SECTION DIRECTORY:

Section 1. Amends s. 559.952, F.S., relating to Financial Technology Sandbox.

Section 2. Amends s. 560.103, F.S., relating to definitions.

Section 3. Amends s. 560.123, F.S., relating to Florida Control of Money Laundering in Money Services Business Act.

Section 4. Amends s. 560.125, F.S., relating to unlicensed activity; penalties.

Section 5. Amends s. 560.204, F.S., relating to license required.

Section 6. Amends s. 560.208, F.S., relating to conduct of business.

Section 7. Amends s. 560.2085, F.S., relating to authorized vendors.

Section 8. Amends s. 560.210, F.S., relating to permissible investments.

Section 9. Amends s. 560.211, F.S., relating to required records.

Section 10. Amends s. 560.212, F.S., relating to financial liability.

Section 11. Provides an effective date of January 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See *Fiscal Comments*.

2. Expenditures:

   See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's overall impact on the private sector, while likely positive, is indeterminate. The bill provides regulatory clarity as to the way in which virtual currency is regulated under ch. 560, F.S. To the extent that the Espinoza case may have caused some businesses to become licensed out of an abundance of

caution when buying and selling virtual currency in two-party transactions, the regulatory clarity provided by the bill may result in such businesses foregoing licensure. Additionally, the bill may lead to greater protection for consumers transacting in virtual currency through third-party intermediaries. The regulatory clarity provided by the bill may lead to more money transmitter licensees, especially those that deal in virtual currency. Businesses that apply for a money transmitter license would be subject to fees for initial licensure ($375), biannual renewal ($750), fingerprinting of control persons (approximately $65 per individual for initial fingerprinting plus $6 per individual biannually for fingerprint retention), and examination expenses every 5 years (approximately $3,800).[83]

D. FISCAL COMMENTS:

The fiscal impact on OFR is indeterminate. The regulatory clarity provided by the bill may lead to more money transmitter licensees, especially those that deal in virtual currency. This may increase revenues in the Regulatory Trust Fund, though OFR would incur additional costs for examination expenses associated with the new licensees. However, to the extent that the Espinoza case may have caused some businesses to become licensed out of an abundance of caution when buying and selling virtual currency in two-party transactions, the regulatory clarity provided by the bill may result in such businesses foregoing licensure.

Since the potential number of additional licensees and corresponding expenses for oversight is unknown, the fiscal impact on the Regulatory Trust Fund is indeterminate. OFR has noted that additional staff and funding may be required in the future if the number of new licensees dealing in virtual currency significantly increases beyond its capacity to absorb the additional workload.[84]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill adds rulemaking authority for recordkeeping requirements related to virtual currency. Other changes made by the bill may necessitate amendment to current rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 1, 2021, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute amends the definition of "virtual currency" to clarify the exclusion of consumer affinity or rewards programs.

The staff analysis has been updated to reflect the committee substitute.

[83] Office of Financial Regulation (OFR), Agency Analysis of 2022 Senate Bill 486, pp. 9-10 (Nov. 19, 2021).
[84] OFR, *supra* note 83, at p. 9.

A bill to be entitled

An act relating to money services businesses; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; amending s. 560.103, F.S.; revising and providing definitions; amending s. 560.123, F.S.; revising the purpose of the Florida Control of Money Laundering in Money Services Business Act; revising duties of money services businesses; revising provisions related to violations of money services business activities and penalties for such violations; amending s. 560.125, F.S.; revising provisions related to violations of money services business activities and penalties for such violations; amending s. 560.204, F.S.; revising provisions related to certain prohibited activities without a license; revising the definition of the term "compensation"; amending s. 560.208, F.S.; revising requirements for a money transmitter or payment instrument seller to conduct business; amending s. 560.2085, F.S.; revising requirements for a written contract between a money transmitter or payment instrument seller and an authorized vendor; amending s. 560.210, F.S.; providing requirements for a money transmitter that receives virtual currency; excluding virtual currency in the calculation of permissible

investments under certain circumstances; amending s. 560.211, F.S.; revising recordkeeping requirements for a money transmitter or payment instrument seller; amending s. 560.212, F.S.; revising financial liability requirements for a money transmitter or payment instrument seller; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is amended to read:

559.952 Financial Technology Sandbox.—

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000, and the office's authority to investigate the applicant's background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall investigate the applicant's background.

3. Section 560.109, only to the extent that the section requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the subsection would prohibit a licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the

subsection would prohibit a licensee from engaging in, or advertising that it engages in, ~~the selling or issuing of payment instruments or in~~ the activity of a payment instrument seller or money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the factors under paragraph (5)(c) and the maximum number of consumers authorized to receive the financial product or service under this section.

Section 2. Subsections (14), (21), (23), (29), and (35) of section 560.103, Florida Statutes, are amended, and subsection (36) is added to that section, to read:

560.103 Definitions.—As used in this chapter, the term:

(14) "Electronic instrument" means a card, tangible object, or other form of electronic payment used for the transmission, ~~or~~ payment, ~~of money~~ or ~~the~~ exchange of currency or monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use.

(21) "Monetary value" means a medium of exchange, other than virtual currency, regardless of whether it is ~~or not~~ redeemable in currency.

(23) "Money transmitter" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, a ~~or~~ payment instrument, or virtual currency ~~instruments~~ for the purpose of acting as an intermediary to transmit currency, monetary value, a payment instrument, or virtual currency from one person to another location or person ~~transmitting the same~~ by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. The term includes only an intermediary that has the ability to unilaterally execute or indefinitely prevent a transaction.

(29) "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument used for the transmission, exchange, or payment of currency ~~money,~~ or monetary value, regardless of whether it is ~~or not~~ negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

(35) "Stored value" means currency ~~funds~~ or monetary value

represented in digital electronic format, regardless of whether it is ~~or not~~ specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.

(36) "Virtual currency" means a medium of exchange in electronic or digital format that is not currency. The term does not include a medium of exchange in electronic or digital format that is used:

(a) Solely within online gaming platforms with no market or application outside such gaming platforms; or

(b) Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants but cannot be converted into or redeemed for currency or another medium of exchange.

Section 3. Subsections (2), (3), and (4) and paragraphs (b), (c), and (d) of subsection (8) of section 560.123, Florida Statutes, are amended to read:

560.123 Florida Control of Money Laundering in Money Services Business Act.—

(2) The purpose of this section is to require the maintenance of certain records of transactions involving currency, monetary value, ~~or~~ payment instruments, or virtual currency in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory

investigations or proceedings.

(3) A money services business shall keep a record, as prescribed by the commission, of each financial transaction occurring in this state which it knows to involve currency, monetary value, a ~~or other~~ payment instrument, or virtual currency ~~as prescribed by the commission,~~ having a value greater than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of this section or chapter 896. The money services business must maintain appropriate procedures to ensure compliance with this section and chapter 896.

(a) Multiple financial transactions shall be treated as a single transaction if the money services business has knowledge that they are made by or on behalf of any one person and result in value ~~cash~~ in or value ~~cash~~ out totaling a value of more than $10,000 during any day.

(b) A money services business may keep a record of any financial transaction occurring in this state, regardless of the value, if it suspects that the transaction involves the proceeds of unlawful activity.

(c) The money services business must file a report with the office of any records required by this subsection, at such time and containing such information as required by rule. The timely filing of the report required by 31 U.S.C. s. 5313 with the appropriate federal agency shall be deemed compliance with

the reporting requirements of this subsection unless the reports are not regularly and comprehensively transmitted by the federal agency to the office.

(d) A money services business, or officer, employee, or agent thereof, that files a report in good faith pursuant to this section is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.

(4) A money services business must comply with the money laundering, enforcement, and reporting provisions of s. 655.50 relating to reports of transactions involving currency transactions and payment instruments, as applicable, and of chapter 896 concerning offenses relating to financial transactions.

(8)

(b) A person who willfully violates any provision of this section, if the violation involves:

1. Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of

the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) In addition to the penalties authorized by s. 775.082, s. 775.083, or s. 775.084, a person who has been convicted of, or entered a plea of guilty or nolo contendere, regardless of adjudication, to having violated paragraph (b) may be sentenced to pay a fine of up to the greater of $250,000 or twice the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~, except that on a second or subsequent conviction for or plea of guilty or nolo contendere, regardless of adjudication, to a violation of paragraph (b), the fine may be up to the greater of $500,000 or quintuple the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~.

(d) A person who violates this section is also liable for a civil penalty of up to ~~not more than~~ the greater of the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency involved or $25,000.

Section 4. Subsections (5), (6), and (7) of section 560.125, Florida Statutes, are amended to read:

560.125 Unlicensed activity; penalties.—

(5) A person who violates this section, if the violation involves:

(a) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) In addition to the penalties authorized by s. 775.082, s. 775.083, or s. 775.084, a person who has been convicted of, or entered a plea of guilty or nolo contendere to, having violated this section may be sentenced to pay a fine of up to the greater of $250,000 or twice the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~, except that on a second or subsequent violation of this section~~,~~ the fine may be up to the greater of $500,000 or quintuple the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is~~

~~greater~~.

(7) A person who violates this section is also liable for a civil penalty of up to the greater of ~~not more than~~ the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency involved or $25,000~~, whichever is greater~~.

Section 5. Subsection (1) of section 560.204, Florida Statutes, is amended to read:

560.204 License required.—

(1) Unless exempted, a person may not engage in, or in any manner advertise that they engage in, ~~the selling or issuing of payment instruments or in~~ the activity of a payment instrument seller or money transmitter, for compensation, without first obtaining a license under this part. For purposes of this subsection ~~section~~, the term "compensation" includes profit or loss on the exchange of currency, monetary value, or virtual currency.

Section 6. Subsections (5) and (6) of section 560.208, Florida Statutes, are amended to read:

560.208 Conduct of business.—In addition to the requirements specified in s. 560.1401, a licensee under this part:

(5) Shall, in the normal course of business, ensure that currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted is available to the designated recipient within 10 business days after receipt.

(6) Shall immediately upon receipt of currency, monetary value, a ~~or~~ payment instrument, or virtual currency provide a confirmation or sequence number to the customer verbally, by paper, or electronically.

Section 7. Paragraph (b) of subsection (2) of section 560.2085, Florida Statutes, is amended to read:

560.2085 Authorized vendors.—A licensee under this part shall:

(2) Enter into a written contract, signed by the licensee and the authorized vendor, which:

(b) Includes contract provisions that require the authorized vendor to:

1. Report to the licensee, immediately upon discovery, the theft or loss of currency, monetary value, a payment instrument, or virtual currency received for a transmission or for a payment instrument sold;

2. Display a notice to the public, in such form as prescribed by rule, that the vendor is the authorized vendor of the licensee;

3. Remit all amounts owed to the licensee for all transmissions accepted and all payment instruments sold in accordance with the contract between the licensee and the authorized vendor;

4. Hold in trust all currency, monetary value, ~~or~~ payment instruments, or virtual currency received for transmissions or

for the purchase of payment instruments from the time of receipt by the licensee or authorized vendor until the time the transmission obligation is completed;

5. Not commingle the currency, monetary value, payment instruments, or virtual currency ~~money~~ received for transmissions accepted or payment instruments sold on behalf of the licensee with the assets ~~money~~ or property of the authorized vendor, except for making change in the ordinary course of the vendor's business;~~, and~~

6. Ensure that the currency, monetary value, payment instruments, or virtual currency received for transmissions accepted or payment instruments sold ~~money~~ is accounted for at the end of the business day;

7.~~6.~~ Consent to examination or investigation by the office;

8.~~7.~~ Adhere to the applicable state and federal laws and rules pertaining to a money services business; and

9.~~8.~~ Provide such other information or disclosure as may be required by rule.

Section 8. Subsections (2) and (3) of section 560.210, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to that section to read:

560.210 Permissible investments.—

(2) Each money transmitter that receives virtual currency,

either directly or through an authorized vendor, for the purpose of transmitting such virtual currency from one person to another location or person must at all times, until the transmission obligation is completed, hold virtual currency of the same type and amount owed or obligated to the other location or person. Virtual currency received and held under this subsection is not included in the amount of outstanding money transmissions for purposes of calculating the permissible investments required by subsection (1).

Section 9. Paragraphs (a), (e), and (f) of subsection (1) of section 560.211, Florida Statutes, are amended, and paragraph (j) is added to subsection (1) of that section, to read:

560.211 Required records.—

(1) In addition to the record retention requirements under s. 560.1105, each licensee under this part must make, keep, and preserve the following books, accounts, records, and documents for 5 years:

(a) A daily record of payment instruments sold and of currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted.

(e) Records of outstanding payment instruments and of currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted.

(f) Records of each payment instrument paid and of currency, monetary value, payment instruments, or virtual

currency transmitted ~~money transmission delivered~~.

(j) Any additional records, as prescribed by rule, related to virtual currency.

Section 10. Section 560.212, Florida Statutes, is amended to read:

560.212 Financial liability.—A licensee under this part is liable for the payment of all currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted and payment instruments that it sells, in whatever form and whether directly or through an authorized vendor, as the maker, drawer, or principal thereof, regardless of whether such items are ~~item is~~ negotiable or nonnegotiable.

Section 11. This act shall take effect January 1, 2023.

HB 381

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 381 Breach of Bond Costs
SPONSOR(S): Maney
TIED BILLS: **IDEN./SIM. BILLS:** SB 1182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Padgett	Hall
2) Commerce Committee		Hinshelwood	Hamon
3) Judiciary Committee			

SUMMARY ANALYSIS

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S. Bail requires an arrestee to pay a set sum of money to the court to be released from jail. As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond executed by a bail bond agent. To use the services of a bail bond agent, an incarcerated person must pay a nonrefundable fee to the bail bond agent equal to 10 percent of the bond amount set by the court. This contract obligates the bail bond agent to ensure a defendant appears at all required court appearances. If a defendant fails to appear at a required court appearance, the bond is breached, and the court is required to issue an order forfeiting the bond posted by the bail bond agent.

A bail bond agent is exonerated of any further liability on a bail bond if, prior to a breach of the bond, the bail bond agent agrees to pay the transportation cost of returning a defendant who is incarcerated in another county jail or prison to the jurisdiction of the court. Surrendering an incarcerated defendant prior to the breach of the bond eliminates the need for a bail bond agent to go through the bond forfeiture and discharge process, and absolves the bail bond agent of future liability on the bond. The term "transportation cost" is not defined in statute. However, the Second District Court of Appeal has interpreted the term narrowly, applying only to actual transportation expenses. This does not include ancillary costs associated with transportation, such as the salary of the officers involved in transporting the defendant, vehicle costs, meals, and lodging.

The "jurisdiction" to which the bail bond agent must return the defendant under s. 903.21(3), F.S., is any county within the judicial circuit of the court which issued the bond. For example, to be exonerated from liability on the bond, if a defendant is released on bail in Franklin County (Apalachicola) and is subsequently arrested and detained in Duval County (Jacksonville), the bail bond agent is only required to pay transportation costs to return the defendant to Jefferson County, the nearest county to Jacksonville that is in the same judicial circuit as Franklin County. The Franklin County Sheriff's Office is then responsible for the costs associated with transporting the defendant from Jefferson County to Franklin County.

HB 381 amends the definition of "jurisdiction" in s. 903.21(3), F.S., to require a bail bond agent to transport an incarcerated defendant to the county from which the defendant was released on bail, rather than any county in the same judicial circuit, in order to be exonerated from liability on a bond prior to a breach. The bill also requires a bail bond agent to pay all costs and expenses incurred in returning a defendant to the court's jurisdiction, rather than just the cost of transportation. Requiring a bail bond agent to transport to a defendant to the county where he or she was released on bond shifts the cost of transporting a defendant from the sheriff to the bail bond agent who is profiting off the bond.

The bill may reduce expenditures incurred by sheriffs from transporting a defendant from a county within a judicial circuit to the county from which the defendant was released on bail.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pretrial Release

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable grounds. A judge is required to presume that nonmonetary conditions[1] are sufficient for any person to be granted pretrial release who is not charged with a dangerous crime.[2] Although a court has the authority to impose any number of pretrial release conditions, it must impose conditions of release that require the defendant to refrain from criminal activity and to refrain from contact with the victim.[3] If a defendant violates the pretrial release conditions, he or she may be arrested and held to answer before the court having jurisdiction to try the defendant.[4]

Bail Bonds

Issuance of a Bail Bond

Bail is a common monetary condition of pretrial release that requires an arrestee to pay a set sum of money to the court to be released from jail.[5] As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond executed by a bail bond agent licensed under ch. 648, F.S.[6] Generally, to use the services of a bail bond agent, an incarcerated person must pay a nonrefundable fee to the bail bond agent equal to 10 percent of the bond amount set by the court.[7] This contract obligates the bail bond agent to ensure a defendant appears at all required court appearances.[8]

Breach and Forfeiture of a Bail Bond

If a defendant fails to appear in court or violates any pretrial release conditions, he or she breaches the bond and a court generally must declare the bond and any money deposited to be forfeited.[9] However, this forfeiture requirement does not apply, even if there is a breach of the bond, when the information, indictment, or affidavit in the criminal case was not filed within six months of arrest, or the clerk of the court failed to provide the agent with at least 72 hours' notice of the time and date of the required appearance for the defendant.[10] Within five days after forfeiture of a bond, the court must mail or electronically transmit a notice to the bail bond agent and the surety company.[11] The value of the

[1] Nonmonetary conditions include any condition that does not require the payment of a financial guarantee, such as releasing the arrestee on his or her recognizance, placement in a pretrial release program, or placing restrictions on the arrestee's travel, association, or place of abode. *See* Fla. R. Crim. P. 3.131.
[2] S. 907.041(3), F.S. "Dangerous crimes" include: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of chapter 893; attempting or conspiring to commit any such crime; and human trafficking. s. 907.041, F.S.
[3] S. 903.047, F.S.
[4] Ss. 903.0471 and 907.041, F.S.
[5] S. 903.011, F.S.
[6] S. 903.105, F.S.
[7] *Id. See also* Florida Dept. of Financial Services, *Bail Bonds Overview* https://www.myfloridacfo.com/division/consumers/understandingcoverage/bailbondsoverview.htm (last visited Jan. 13, 2022).
[8] S. 903.045, F.S.
[9] S. 903.26(2)(a), F.S.
[10] S. 903.26(1), F.S.
[11] S. 903.26(2)(a), F.S.

forfeited bond must be paid by the bail bond agent within 60 days of the date the notice was mailed or transmitted.[12]

Exoneration of Liability

A bail bond agent is exonerated of any further liability on a bail bond if, prior to a breach of the bond, the bail bond agent agrees to pay the transportation cost of returning a defendant who is incarcerated in another county jail or prison to the jurisdiction of the court.[13] Surrendering an incarcerated defendant prior to the breach of the bond eliminates the need for a bail bond agent to go through the bond forfeiture and discharge process, and absolves the bail bond agent of future liability on the bond. The term "transportation cost" is not defined in statute. However, the Second District Court of Appeal has interpreted the term narrowly, applying only to actual transportation expenses.[14] This does not include ancillary costs associated with transportation, such as the salary of the officers involved in transporting the defendant, vehicle costs, meals, and lodging.[15]

The "jurisdiction" to which the bail bond agent must return the defendant under s. 903.21(3), F.S., is any county within the judicial circuit of the court which issued the bond.[16] This means a bail bond agent is only required to pay the cost to return a defendant to the closest county from where the defendant is incarcerated which lies within the same judicial circuit as the court that issued the bond.[17] For example, to be exonerated from liability on the bond, if a defendant is released on bail in Franklin County (Apalachicola) and is subsequently arrested and detained in Duval County (Jacksonville), the bail bond agent is only required to pay transportation costs to return the defendant to Jefferson County, the nearest county to Jacksonville that is in the same judicial circuit as Franklin County. The Franklin County Sheriff's Office is then responsible for the costs associated with transporting the defendant the remaining 93 miles from Jefferson County to Franklin County.[18]

Effect of Proposed Changes

HB 381 amends the definition of "jurisdiction" in s. 903.21(3), F.S., to require a bail bond agent to transport an incarcerated defendant to the county from which the defendant was released on bail, rather than any county in the same judicial circuit, in order to be exonerated from liability on a bond prior to a breach. The bill also requires a bail bond agent to pay all costs and expenses incurred in returning a defendant to the court's jurisdiction, rather than just the cost of transportation. Requiring a

[12] *Id.*
[13] S. 903.21(3), F.S.
[14] *Easy Bail Bonds v. Polk County*, 784 So. 2d 1173, 1177 (Fla. 2d DCA 2001).
[15] *Id*. at 1176.
[16] S. 903.21(3), F.S.
[17] Section 26.021, F.S., provides Florida's circuit courts are divided into 20 judicial circuits as follows:
- First Circuit - Escambia, Okaloosa, Santa Rosa and Walton Counties.
- Second Circuit - Franklin, Gadsden, Jefferson, Leon, Liberty and Wakulla Counties.
- Third Circuit - Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee and Taylor Counties.
- Fourth Circuit - Clay, Duval and Nassau Counties.
- Fifth Circuit - Citrus, Hernando, Lake, Marion and Sumter
- Sixth Circuit - Pasco and Pinellas Counties.
- Seventh Circuit - Flagler, Putnam, St. Johns and Volusia Counties.
- Eighth Circuit - Alachua, Baker, Bradford, Gilchrist, Levy and Union Counties.
- Ninth Circuit - Orange and Osceola Counties.
- Tenth Circuit - Hardee, Highlands and Polk Counties.
- Eleventh Circuit - Miami-Dade County.
- Twelfth Circuit - DeSoto, Manatee and Sarasota Counties.
- Thirteenth Circuit – Hillsborough County.
- Fourteenth Circuit - Bay, Calhoun, Gulf, Holmes, Jackson and Washington Counties.
- Fifteenth Circuit - Palm Beach County.
- Sixteenth Circuit – Monroe County.
- Seventeenth Circuit – Broward County.
- Eighteenth Circuit - Brevard and Seminole Counties.
- Nineteenth Circuit - Indian River, Martin, Okeechobee and St. Lucie Counties.
- Twentieth Circuit - Charlotte, Collier, Glades, Hendry and Lee Counties.

[18] Google Maps, http://www.google.com/maps/dir (last visited Jan. 13, 2022).

bail bond agent to transport a defendant to the county where he or she was released on bond shifts the cost of transporting a defendant from the sheriff to the bail bond agent who is profiting off the bond.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 903.21, F.S., relating to method of surrender; exoneration of obligors.
Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may reduce expenditures incurred by sheriffs from transporting a defendant from a county within a judicial circuit to the county from which a defendant was released on bail.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may require a bail bond agent to transport a defendant a greater distance, thereby shifting the cost of transporting a defendant from the sheriff to the bail bond agent.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to breach of bond costs; amending s. 903.21, F.S.; requiring sureties to pay costs and expenses incurred in returning a defendant to the jurisdiction of the court; revising the definition of the term "jurisdiction" to which the defendant must be returned; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 903.21, Florida Statutes, is amended to read:

903.21 Method of surrender; exoneration of obligors.—

(3) The surety shall be exonerated of liability on the bond if it is determined prior to breach of the bond that the defendant is in any jail or prison and the surety agrees in writing to pay the costs and expenses incurred in ~~transportation cost of~~ returning the defendant to the jurisdiction of the court. For purposes of this subsection, "jurisdiction" means the county from which the defendant was released on bail ~~within the judicial circuit as prescribed by law~~.

Section 2. This act shall take effect July 1, 2022.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HB 789

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 789 Lifeline Services
SPONSOR(S): Payne
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N	Johnson	Keating
2) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

Since 1985, the Lifeline program (Lifeline) has provided telecommunications service discounts for qualifying low-income consumers. The Federal Communications Commission (FCC) has designated the Universal Service Administrative Company (USAC), an independent not-for-profit corporation, as the program's administrator. Consumers can qualify for Lifeline either through program-based or income-based eligibility standards.

In Florida, the Public Service Commission (PSC) oversees Lifeline. Under Florida law, an eligible telecommunications carrier (ETC) must provide Lifeline to qualified residential subscribers. Florida law provides for automatic enrollment in Lifeline for individuals already enrolled in a qualifying program.

The bill updates Florida's Lifeline statute to be consistent with federal Lifeline regulations. In summary, the bill:

- Clarifies that an ETC must notify a Lifeline subscriber of impending termination of Lifeline service if it has reason to believe that the subscriber no longer qualifies for Lifeline.
- Provides that a Lifeline subscriber upon request, must provide proof of continued eligibility for Lifeline to the ETC, the FCC, or the FCC's designee.
- Removes obsolete references to state agencies no longer involved in Lifeline.
- Clarifies that the only government entities involved in Lifeline are the PSC, the Department of Children and Families, and the FCC.
- Removes state standards for the provision of Lifeline that are inconsistent with the FCC's ETC eligibility requirements.
- Authorizes certain information exempt from public records laws to be released to the FCC or its designee as required to administer Lifeline.

The bill does not have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Lifeline Program

Since 1985, the Lifeline program (Lifeline) has provided telecommunications service discounts for qualifying low-income consumers. Lifeline's initial goal was to ensure that all Americans had the opportunity and security that basic phone service provides. Over time, that goal has evolved to include broadband Internet service. Qualifying households can receive up to a $9.25 discount on their monthly phone or broadband Internet bills from wireline service providers that have been designated as eligible telecommunications carriers (ETCs). Alternatively, consumers may choose to receive monthly wireless minutes and/or measured data service from designated wireless providers.[1]

The Federal Communications Commission (FCC) establishes rules governing Lifeline. The FCC has designated the Universal Service Administrative Company (USAC), an independent not-for-profit corporation, as Lifeline's administrator. USAC is responsible for data collection and maintenance, support calculation, and disbursement for Lifeline.[2]

Consumers may qualify to participate in Lifeline either through program-based or income-based eligibility standards. Program-based eligibility is determined by a customer's enrollment in specific qualifying programs. Customers can qualify for Lifeline by being enrolled in any of the following programs:

- Supplemental Nutrition Assistance Program (SNAP)
- Medicaid
- Federal Public Housing Assistance
- Supplemental Security Income
- Veterans or Survivors Pension Program
- Bureau of Indian Affairs Programs, including Tribal Temporary Assistance to Needy Families, Head Start Subsidy, and National School Lunch Program.[3]

Consumers whose total household income is less than 135 percent of the Federal Poverty Guidelines may participate in Lifeline under the income-based standard. The Federal Poverty Guidelines are annually updated by the United States Department of Health and Human Services.[4]

Florida Lifeline Law

In Florida, the Public Service Commission (PSC) oversees Lifeline. Under Florida law, an ETC[5] must provide Lifeline service to qualified residential subscribers, as defined in the ETC's published schedules.[6]

Each local exchange telecommunications company[7] with more than one million access lines and which is designated as an ETC must, and any wireless service provider designated as an ETC[8] may, upon

[1] Public Service Commission (PSC), *2021 Florida Lifeline Assistance Report,* December 2021, p. 3. http://floridapsc.com/Files/PDF/Publications/Reports/Telecommunication/LifelineReport/2021.pdf (last visited Dec. 16, 2021)
[2] *Id.*
[3] *Id.*
[4] *Id.* at 4.
[5] Section 364.10(1)(a), F.S., defines the term "eligible telecommunications carrier" to mean a telecommunications company, as defined by s. 364.02, F.S., which is designated as an eligible telecommunications carrier by the PSC pursuant to 47 C.F.R. s. 54.201.
[6] S. 364.10(1)(a), F.S.
[7] Section 364.02(8), F.S., defines the term "local exchange telecommunications company" to mean any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995.
[8] Since 2016, no wireline carriers in Florida have had more than a million access lines. Wireless ETCs are given more flexibility in that they "may" provide Lifeline services at the 150 percent threshold. However, it is unlikely that any wireless ETC is currently qualifying

filing a notice of election to do so with the PSC, provide Lifeline to any otherwise eligible customer or potential customer whose household income is 150 percent or less of the federal poverty guidelines for Lifeline. The Office of Public Counsel (OPC)[9] certifies and maintains claims submitted by customers for Lifeline eligibility under the income test.[10] Customers may also be eligible for Lifeline under the eligibility standards established by federal law based on participation in certain low-income assistance programs.[11]

Additionally, each intrastate interexchange telecommunications company[12] must file or publish a schedule providing at a minimum the intrastate interexchange telecommunications company's current Lifeline benefits and exemptions to Lifeline customers who meet the income eligibility test.[13]

Each state agency which provides benefits to persons eligible for Lifeline service, in cooperation with the Department of Children and Families (DCF), the Department of Education (DOE), the PSC, the OPC, and ETCs must develop procedures to promote Lifeline participation. The departments, the PSC, and OPC may exchange sufficient information with the appropriate ETCs, such as a person's name, date of birth, service address, and telephone number, so that the ETCs can identify and enroll an eligible person in Lifeline. This information is confidential and exempt from public disclosure but may be released to the applicable ETC for purposes of determining eligibility and enrollment in the Lifeline programs.[14]

If any state agency determines that a person is eligible for Lifeline services, the agency must immediately forward the information to the PSC to ensure that the person is automatically enrolled in the program with the appropriate ETC. The state agency must include an option for an eligible customer to choose not to subscribe to the Lifeline service. The PSC and DCF must adopt rules creating procedures to automatically enroll eligible customers in Lifeline service.[15]

Current law requires the PSC, DCF, OPC, and each ETC offering Lifeline to convene a workgroup to discuss how the eligible subscriber information will be shared, the obligations of each party with respect to the use of that information, and the procedures to be implemented to increase enrollment and verify eligibility.[16]

Under Florida law, an ETC must notify a Lifeline subscriber of impending termination of Lifeline service if the ETC reasonably believes that the subscriber no longer qualifies for Lifeline service. This notification must be sent in a letter that is separate from the subscriber's bill. The ETC must allow a subscriber 60 days following the date of the pending termination letter to demonstrate continued eligibility, and the subscriber must present proof of continued eligibility. The ETC may transfer a subscriber off of Lifeline service if the subscriber fails to demonstrate continued eligibility.[17]

Lifeline Modernization

In April 2016, the FCC released its Lifeline Modernization Order (2016 Order) to modernize Lifeline by including broadband as a supported service, designating minimum service standards for Lifeline, and establishing the National Verifier.[18]

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customers using this expanded criterion because those customers would not qualify for reimbursement from USAC under the 135 percent guideline.

[9] The Office of Public Counsel provides representation for the people of the state in proceedings in front of the PSC. (S. 350.0611, F.S.).

[10] S. 364.10(2)(a), F.S.

[11] S. 364.10(2)(a), F.S.

[12] Section 364.02 (7) defines the term "intrastate interexchange telecommunications company" to mean any entity that provides intrastate interexchange telecommunications services.

[13] S. 364.10(2)(a), F.S.

[14] S. 364.10(2)(g)1., F.S.

[15] S. 364.10(2)(g)2., F.S.

[16] S. 364.10(2)(g)3., F.S.

[17] S. 364.10(1)(e), F.S.

[18] PSC *supra* note 1 at 15.

Prior to the FCC's 2016 Order, a state that mandated Lifeline support could establish its own qualification criteria. Therefore, a state could have income eligibility standards different from the FCC's or include additional state qualifying programs. The FCC's 2016 Order eliminated this provision to simplify the administration of the Lifeline program and establish eligibility criteria that do not vary from state to state.[19]

Further, the 2016 Order directed the USAC to develop a national Lifeline eligibility verifier as a way to fight waste, fraud, and abuse. The National Verifier's purpose is to determine initial subscriber eligibility, conduct annual recertification, populate a national database consisting of Lifeline customers, and provide support payments to providers serving these customers.[20]

The National Verifier's efficiency is contingent upon the establishment of automated verification interface processes connected to qualifying program databases. To assist in Florida's transition to the National Verifier, in 2019, the PSC coordinated an informal meeting between DCF and USAC. The meeting established the groundwork for an automated verification process that would allow USAC to interface with DCF's qualifying program database. The DCF database would provide USAC with confirmation that a customer is a participant in a qualifying program without revealing the program itself or any other customer information. Once a customer is verified as a qualifying program participant through this process, they are enrolled in the Lifeline program with no need for any further documentation. As of January 2021, USAC's connection to the DCF database has been established.[21]

Effect of the Bill

The bill conforms Florida's Lifeline laws to be consistent with federal Lifeline regulations.

The bill clarifies that an ETC must notify a Lifeline subscriber of impending termination of Lifeline service if it has reason to believe that the subscriber no longer qualifies for Lifeline service. The bill requires the subscriber to provide proof of continued eligibility for Lifeline service upon request to the ETC, the FCC, or the FCC's designee.

The bill also removes references to OPC and DOE because neither entity remains involved in Lifeline. The bill clarifies that the only entities involved in Lifeline are the PSC, DCF, and the FCC. The bill also eliminates state eligibility standards that conflict with the FCC's eligibility standards.

The bill also removes an obsolete Lifeline working group consisting of the PSC, DCF, OPC, and ETCs to discuss procedures regarding the implementation the Lifeline program.

The bill amends the Lifeline public records exemption, authorizing certain information to be released to the FCC or its designee as required to administer the program.

The bill has an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1 Amends s. 364.10, F.S., relating to Lifeline Service.

Section 2 Amends s. 364.107, F.S., relating to a public records exemption for Lifeline Assistance Plan participants.

Section 3 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[19] *Id.*
[20] *Id.* at 17.
[21] *Id.*

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to impact county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill repeals a requirement that the PSC and DCF adopt rules creating procedures to automatically enroll eligible customers in Lifeline service.

The PSC may need to revise its existing Lifeline rules to conform to provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to Lifeline services; amending s. 364.10, F.S.; removing a provision requiring eligible telecommunications carriers to provide a specified number of days to allow a subscriber to demonstrate continued eligibility after a termination letter is sent; requiring subscribers to present proof of continued eligibility upon request of specified entities; removing provisions that specify circumstances under which a telecommunications carrier must credit a consumer's bill with the Lifeline Assistance credit; removing provisions specifying conditions under which certain telecommunications carriers and commercial mobile radio service providers may or must provide Lifeline services to specified customers; removing the Department of Education and the Office of Public Counsel from being entities with whom state agencies must cooperate in developing procedures to promote Lifeline participation; providing that certain information is exempt as well as confidential; revising procedures that state agencies must use in determining a person's eligibility for a Lifeline qualifying program; amending s. 364.107, F.S.; authorizing certain confidential and exempt information to be released to

the Federal Communications Commission or designee; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (e) and (f) of subsection (1) and subsection (2) of section 364.10, Florida Statutes, are amended to read:

364.10 Lifeline service.—

(1)

(e)1. An eligible telecommunications carrier must notify a Lifeline subscriber of impending termination of Lifeline service if the company has a reasonable basis for believing that the subscriber no longer qualifies for the service. Notification of pending termination must be in the form of a letter that is separate from the subscriber's bill.

2. ~~An eligible telecommunications carrier shall allow a subscriber 60 days following the date of the pending termination letter to demonstrate continued eligibility.~~ The subscriber must present proof of continued eligibility upon request of the eligible telecommunications carrier or the Federal Communications Commission or its designee. An eligible telecommunications carrier may transfer a subscriber off of Lifeline service, pursuant to its tariff, if the subscriber fails to demonstrate continued eligibility.

3. The commission shall establish procedures for such notification and termination.

(f) An eligible telecommunications carrier shall timely credit a consumer's bill with the Lifeline Assistance credit as soon as practicable, but no later than 60 days following receipt of notice of eligibility ~~from the Office of Public Counsel or proof of eligibility from the consumer~~.

(2)~~(a) Each local exchange telecommunications company that has more than 1 million access lines and that is designated as an eligible telecommunications carrier shall, and any commercial mobile radio service provider designated as an eligible telecommunications carrier pursuant to 47 U.S.C. s. 214(e) may, upon filing a notice of election to do so with the commission, provide Lifeline service to any otherwise eligible customer or potential customer who meets an income eligibility test at 150 percent or less of the federal poverty income guidelines for Lifeline customers. Such a test for eligibility must augment, rather than replace, the eligibility standards established by federal law and based on participation in certain low-income assistance programs. Each intrastate interexchange telecommunications company shall file or publish a schedule providing at a minimum the intrastate interexchange telecommunications company's current Lifeline benefits and exemptions to Lifeline customers who meet the income eligibility test set forth in this subsection. The Office of Public Counsel~~

~~shall certify and maintain claims submitted by a customer for eligibility under the income test authorized by this subsection.~~

(a) ~~(b)~~ Each eligible telecommunications carrier subject to this subsection shall provide to each state and federal agency providing benefits to persons eligible for Lifeline service applications, brochures, pamphlets, or other materials that inform the persons of their eligibility for Lifeline, and each state agency providing the benefits shall furnish the materials to affected persons at the time they apply for benefits.

(b) ~~(c)~~ An eligible telecommunications carrier may not discontinue basic local telecommunications service to a subscriber who receives Lifeline service because of nonpayment by the subscriber of charges for nonbasic services billed by the telecommunications company, including long-distance service. A subscriber who receives Lifeline service shall pay all applicable basic local telecommunications service fees, including the subscriber line charge, E-911, telephone relay system charges, and applicable state and federal taxes.

(c) ~~(d)~~ An eligible telecommunications carrier may not refuse to connect, reconnect, or provide Lifeline service because of unpaid toll charges or nonbasic charges other than basic local telecommunications service.

(d) ~~(e)~~ An eligible telecommunications carrier may require that payment arrangements be made for outstanding debt associated with basic local telecommunications service,

subscriber line charges, E-911, telephone relay system charges, and applicable state and federal taxes.

(e) ~~(f)~~ An eligible telecommunications carrier may block a Lifeline service subscriber's access to all long-distance service, except for toll-free numbers, and may block the ability to accept collect calls if ~~when~~ the subscriber owes an outstanding amount for long-distance service or amounts resulting from collect calls. However, the eligible telecommunications carrier may not impose a charge for blocking long-distance service. The eligible telecommunications carrier shall remove the block at the request of the subscriber without additional cost to the subscriber upon payment of the outstanding amount. An eligible telecommunications carrier may charge a service deposit before removing the block.

(f) ~~(g)~~1. Each state agency that provides benefits to persons eligible for Lifeline service shall undertake, in cooperation with the Department of Children and Families, ~~the Department of Education,~~ the commission, ~~the Office of Public Counsel,~~ and ~~telecommunications companies designated~~ eligible telecommunications carriers providing Lifeline services, the development of procedures to promote Lifeline participation. The department and ~~departments,~~ the commission~~, and the Office of Public Counsel~~ may exchange sufficient information with the appropriate eligible telecommunications carriers or the Federal Communications Commission or its designee ~~and any commercial~~

~~mobile radio service provider electing to provide Lifeline service under paragraph (a)~~, such as a person's name, date of birth, service address, and telephone number, so that eligible customers can be enrolled ~~the carriers can identify and enroll an eligible person~~ in the Lifeline and Link-Up programs. The information remains confidential and exempt pursuant to s. 364.107 and may only be used for purposes of determining eligibility and enrollment in the Lifeline and Link-Up programs.

2. If any state agency determines that a person is eligible for a Lifeline qualifying program ~~Lifeline services~~, the agency must coordinate with the Federal Communications Commission or its designee to verify eligibility for the Lifeline program ~~shall immediately forward the information to the commission to ensure that the person is automatically enrolled in the program with the appropriate eligible telecommunications carrier. The state agency shall include an option for an eligible customer to choose not to subscribe to the Lifeline service. The Public Service Commission and the Department of Children and Families shall adopt rules creating procedures to automatically enroll eligible customers in Lifeline service~~.

~~3. The commission, the Department of Children and Families, the Office of Public Counsel, and each eligible telecommunications carrier offering Lifeline and Link-Up services shall convene a Lifeline Workgroup to discuss how the~~

~~eligible subscriber information in subparagraph 1. will be shared, the obligations of each party with respect to the use of that information, and the procedures to be implemented to increase enrollment and verify eligibility in these programs.~~

(g) ~~(h)~~ The commission shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31 each year on the number of customers who are subscribing to Lifeline service and the effectiveness of any procedures to promote participation.

(h) ~~(i)~~ The commission may undertake appropriate measures to inform low-income consumers of the availability of the Lifeline and Link-Up programs.

(i) ~~(j)~~ The commission shall adopt rules to administer this section.

Section 2. Subsection (2) of section 364.107, Florida Statutes, is amended to read:

364.107 Public records exemption; Lifeline Assistance Plan participants.—

(2) Information made confidential and exempt under subsection (1) may be released to the applicable telecommunications carrier or the Federal Communications Commission or its designee for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

Section 3. This act shall take effect July 1, 2022.

HB 6031

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6031 Individual Wine Containers
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 384

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	13 Y, 0 N	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Current law addressing limitations on the size of individual wine containers provides the following:

- The sale of wine in an individual container that holds more than one gallon of wine is prohibited.
- Wine may be sold in a reusable container of 5.16 gallons.
- Distributors and manufacturers are allowed to sell wine to other distributors and manufacturers in containers of any size.
- Except for restaurants in certain situations, wine sold or offered for sale by a licensed vendor to be consumed off the premises must be in the unopened original container.
- Violations are a second-degree misdemeanor.

The bill repeals the law relating to limitations on the size of individual wine containers.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

The license and registration classifications used in the Beverage Law include the following:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[5]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."[6]

Wine Container Limitations

"Wine" is defined as all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.[7]

Current law governing limitations of the size of wine containers:[8]

- Prohibits the sale of wine in an individual container that holds more than one gallon. However, allows wine to be sold in a reusable container of 5.16 gallons.
- Authorizes qualified distributors and manufacturers to sell wine to other qualified distributors and manufacturers in any size container.[9]
- Except for restaurants in certain situations,[10] requires wine sold or offered for sale by a licensed vendor to be consumed off-premises to be in the unopened original container.

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" includes chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] S. 563.01, F.S.
[5] S. 561.01(5), F.S.
[6] S. 561.14, F.S.
[7] S. 564.01(1), F.S.
[8] S. 564.05, F.S.
[9] *Id*.

- Provides that violations are a second-degree misdemeanor, punishable by a maximum $500 fine[11] and 60 days in prison.[12]

Effect of the Bill

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

B. SECTION DIRECTORY:

Section 1 Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow the sale of wine in an individual container of any size. This may have a positive fiscal impact on businesses that sell wine.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

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[10] S. 564.09, F.S. The exception allows restaurant patrons to leave the premises with "one unsealed bottle of wine for consumption off the premises," provided certain conditions are met. The wine bottle must be partially consumed with a full course meal, securely resealed by the licensee or one of its employees, secured in a bag or container, wrapped in a way that shows it was previously opened, attached to a dated receipt indicating the full course meal, and transported in a locked vehicle glove compartment, locked trunk, or behind the last upright seat of a motor vehicle that is not equipped with a trunk.

[11] S. 775.083(1)(e), F.S.

[12] S. 775.082(4)(b), F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to individual wine containers; repealing s. 564.05, F.S., relating to the limitation of size of individual wine containers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 564.05, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2022.

CODING: Words stricken are deletions; words underlined are additions.